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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 306. 63

AUGUST W. GOETZ, JUNIOR, AND AUGUST F. LUENING, PLAINTIFFS IN ERROR,

vs.

THE BANK OF KANSAS CITY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN.

FILED SEPTEMBER 27, 1883.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 306.

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1 Circuit Court of the United States for the Eastern District of Wisconsin:

UNITED STATES OF AMERICA, } ss:
Eastern District of Wisconsin, }

At a stated term of the circuit court of the United States of America for the eastern district of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said eastern district of Wisconsin, on the first Monday (being the first day) of January, A. D. 1883—present, the honorable John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and the honorable Charles E. Dyer, district judge; Henry Fink, marshal; Edward Kurtz, clerk—among other the following proceedings were had, to wit:

AUGUST W. GOETZ, JR., & AUGUST F. LUENING
vs.
BANK OF KANSAS CITY.

BANK OF KANSAS CITY
vs.
AUGUST W. GOETZ, JR., & AUGUST F. LUENING. } At Law.

Be it remembered that heretofore, to wit, on the 29th day of November, A. D. 1881, came The Bank of Kansas City, plaintiff in the second of above-named causes, by its attorneys, Messrs.
2 Finches, Lynde & Miller, and filed its *pracipe* for a summons against the defendants, August W. Goetz, Jr., and August F. Luening, as follows:

Pracipe for Summons.

Circuit Court of the United States of America for the Eastern District of Wisconsin.

BANK OF KANSAS CITY
vs.
AUGUST W. GOETZ, JR., & AUGUST F. LUENING.

Money demand on contract.

Demand judgment for $2,000.00, with interest at seven per cent. per annum from October 31st, 1881.

Issue a summons in the above-entitled cause, returnable according to law. Complaint not served.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

To Edward Kurtz, clerk.

And same day also filed bond for costs approved by the clerk.

Whereupon a summons issued, returnable according to law, as follows:

3 Circuit Court of the United States for the Eastern District of Wisconsin.

BANK OF KANSAS CITY, Plaintiff,
vs.
AUGUST W. GOETZ, JR., & AUGUST F. LUENING, Defendants.

The President of the United States of America to the said [SEAL.] defendants:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failure so to do, judgment will be rendered against you according to the demand of the complaint.

The sum for which judgment will be demanded in the complaint is two thousand dollars, with interest at 7 per cent. per annum from October 31st, 1881.

The marshal of said district is hereby commanded to serve this summons, and make due return thereto.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Milwaukee, in the eastern district of Wisconsin, this 29th day of November, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the 106th.

EDWARD KURTZ, *Clerk.*

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

P.-O. address: Milwaukee, Wis.

4 Served on the within-named August W. Goetz, Jr., and August F. Luening by showing them this summons and delivering to each of them personally a copy thereof, this 30th day of November, A. D. 1881.

HENRY FINK, *Marshal.*

Fees:

Service	4 00
Copies	60
Travel	06
	$4 66

5 December 15 1881. This day came the plaintiff, by its attorneys, and filed its complaint as follows:

Complaint.

Circuit Court of the United States, Eastern District of Wisconsin.

BANK OF KANSAS CITY, Plaintiff,
against
AUGUST W. GOETZ, Jr., & AUGUST F. LUENING, Defendants.

Above-named plaintiff, by Finches, Lynde & Miller, its attorneys, complains of above-named defendants, and alleges that at the time of the making of the draft hereinafter mentioned it was, ever since has been, and now is, a corporation organized and existing under and by virtue of the laws of Missouri, and that during the same time said defendants were, and still are, as plaintiff is informed and believes, copartners in trade, doing business under the firm name and style of Goetz & Luening.

Said plaintiff alleges that on or about the 24th day of October, 1881, J. N. Du Bois made, executed and delivered his certain
6 bill of exchange in the words and figures, viz:

$2,000.00. KANSAS CITY, *October 24th*, 1881.

At sight pay to the order of E. K. Thornton, cashier, two thousand $\frac{00}{100}$ dollars, value received, and charge the same to account of—

(Signed) J. N. DU BOIS,
Per MAC LELLAN.

To Goetz & Luening, Milwaukee, Wis.

Said plaintiff further alleges that afterwards, to wit, on or about the 24th day of October, 1881, said E. K. Thornton, cashier, endorsed said draft and delivered same to this plaintiff, who is the owner and holder thereof.

Said plaintiff alleges that on or about the 28th day of October, 1881, the defendants, at Milwaukee, under their said firm name, upon sight thereof, accepted said draft in writing.

Said plaintiff further alleges that said draft has not been paid, nor any part thereof, and that there is now due and owing to said plaintiff from said defendants on said draft the sum of two thousand dollars, with interest thereon from October 31st, 1881, which it claims.

7 Wherefore said plaintiff demands judgment against said defendants for said sum of $2,000.00, and interest thereon at 7% per annum from and since October 31, 1881, besides the costs of this suit.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

P. O. address, Milwaukee, Milwaukee county, Wisconsin.

STATE OF MISSOURI, } *ss:*
Jackson County, }

E. K. Thornton being first duly sworn, on oath says: That he is the cashier of the Bank of Kansas City, the plaintiff above named;

that he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the plaintiff is that they are a corporation; that the deponent is an officer of the same, to wit, cashier, and that his knowledge is derived from his
8 being such officer. Deponent further says that this action is founded upon a written instrument for the payment of money only, and which instrument is in possession of deponent.

E. K. THORNTON,
Cash'r Bank of Kansas City, Kansas City, Mo.

Subscribed and sworn to before me, a commissioner for Wisconsin, at Kansas City, Missouri, duly appointed by the Governor of Wisconsin, and qualified under the laws thereof to take affidavits, &c., to be used in Wisconsin, this 13th day of December, A. D. 1881.
Witness my hand and official seal at Kansas City, Mo.

[SEAL.] FRED. W. PERKINS,
Commissioner of Deeds, &c., for Wisconsin, at Kansas City, Mo.

Order that Plaintiff Deposit Certain Papers with Clerk.

JANUARY 17, 1882.

Upon the verified petition of August W. Goetz, Jr., and August F. Luening, the above-named defendants, hereto annexed, and on motion of Cotzhausen, Sylvester & Scheiber, defendants' attorneys—
Ordered that said plaintiff be, and it hereby is, required
9 to produce and deposit with the clerk of this court, that certain instrument, partly written and partly printed, purporting to be a bill of lading or shipping receipt for certain green hides, consigned either to the defendants or to the order of one J. N. Du Bois, and purporting to have been issued by the Chicago and Alton Railroad Company, and delivered to one J. N. Du Bois, at its office in Kansas City, Missouri, and bearing date on or about the 24th day of October, 1881, also to produce and deposit in the same manner, the so-called "value bill" referred to in said petition, issued by said Du Bois, dated on or about October 24, 1881, being the instruments which were attached to the draft mentioned in the complaint at the time such draft was presented to the defendants for acceptance. That such deposit be made within ten days after service of a copy of said affidavit and this order, and that such instruments when so deposited, continue in the possession of said clerk for five days, and that said defendants and their attorneys have permission to inspect and copy the same. Or that said plaintiff show cause before
10 this court, at the court-house in the city of Milwaukee, on the 27th day of January, 1882, at the opening of court on that day or as soon thereafter as counsel can be heard, why it should not make such deposit with said clerk.

Ordered further, that until this order shall have been complied

with, vacated, or reversed, all other proceedings in this action on part of the plaintiff be, and the same hereby are, stayed, and that said defendant be, and they hereby are, allowed ten days after this order shall have been complied with, vacated, or reversed, to prepare and serve their answer to the complaint herein.

Let copies of said petition and of this order be served on Messrs. Finches, Lynde & Miller, the attorneys of the plaintiff, on or before January 19th, 1882.

January 28, 1882. This day came the plaintiff's counsel, and on his motion it is ordered by the court, that the time to deposit the papers in compliance with the order made herein, on the 17th
11 inst., be and hereby is extended ten days.

JANUARY 30, 1882.

Papers referred to in order of Jan'y 17th deposited with the clerk.

FEBRUARY 25, 1882.

This day came the defendant by their attorneys, Messrs. Cotzhausen, Sylvester & Scheiber, and filed their answer as follows:

Answer.

Circuit Court of the United States, Eastern District of Wisconsin.

BANK OF KANSAS CITY, Pl'ff,

vs.

AUGUST W. GOETZ, Jr. and AUGUST F. LUENING, Def'ts.

And now come the defendants in the above-entitled action, by Cotzhausen, Sylvester & Scheiber, their attorneys, and answer the complaint of the above-named plaintiff as follows:

I. For a first defense these defendants allege, that in the early part of October, 1881, Joseph N. Du Bois, a resident of Kansas City, and dealer in hides proposed to these defendants to consign to them, from time to time, hides, of various kinds and quality, to be sold by these defendants for him, said Du Bois, on commission, in the Mil-
12 waukee market. That said proposition was accepted by these defendants and that in order to facilitate continuous purchases and shipments of hides for the purpose aforesaid, it was then and there agreed by and between the said Du Bois and these defendants, that upon making a consignment of hides, in due and proper form, and delivery of a corresponding shipping receipt or bill of lading, entitling these defendants to the control and possession of the merchandise so shipped, the defendants would advance to said Joseph N. Du Bois, consignor, two-thirds of the market price of such shipment at the city of Milwaukee.

II. That on or about the 13th day of October, 1881, these defendants were informed by letter from said Du Bois, that under date of October 11th, 1881, he had shipped them a car load of G. S. hides, (invoice of which was enclosed), and that he had drawn on these defendants a sight draft at the rate of 6½ cents per lb., or ⅔ of the market value at Milwaukee, which then was 9¾ cents per lb., and

that in a few days he might ship them another car load, if not able to do better at Kansas City.

13 That on the 14th day of October, 1881, the plaintiff in this case, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these defendants what purported to be a shipping receipt or bill of lading, issued by the Chicago and Alton R. R. Co. under date of October 11th, 1881, at Kansas City, and reciting, among other things, that said railroad company had received from J. N. Du Bois 500 green hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "To shippers' order. Notify Goetz & Luening, Milwaukee, Wis." That annexed to the aforesaid document there was an invoice or value bill purporting upon its face to give the details of net weight at 26,318 lbs. and market price at Milwaukee at $9\frac{3}{4}$ cents, or, in the aggregate, $2,566.00, and making reference to a sight draft at $\frac{2}{3}$ of the value, viz., for $1,710; and accompanying said papers and attached thereto, so as to form part and parcel of the same trans-

14 action, there was also a draft, dated at Kansas City, October. 11th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these defendants, whereby these defendants were requested to pay at sight, to the order of E. K. Thornton, cashier, seventeen hundred and ten dollars, value received, and charge the same to account of the drawer aforesaid.

That these defendants at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan (who they had reason to believe to be Du Bois' book-keeper and correspondent), but that they were not acquainted with the signature of the railroad agent, who was purported to have signed and issued the aforesaid shipping receipt, and also were ignorant of the correctness of the accompanying invoice or value bill.

That upon examination of the papers it was ascertained that the so-called shipping receipt was endorsed "J. N. Du Bois, per J. Mac Lellan," and the invoice and accompanying draft were endorsed by said plaintiff as follows:

15 "Pay to L. J. Gage, cashier, or order, for collection on account of Bank of Kansas City.

"E. K. THORNTON, *Cashier.*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for the defendant, as hereinbefore particularly stated.)

And these defendants further show that, deeming said documents and papers all and singular to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements upon the face and back of said papers, and thereby influenced to desist from further inquiries into the facts, and believing at the time, from all the circumstances of the case, that the Bank plaintiff, by its endorsements of the invoice, meant to certify to and guaranty the correctness of the same, and that by transfer from Du Bois it had become the owner of the merchandise in question, and that on delivery by

said plaintiff of the shipping receipt a good title in law and
16 in fact would vest in them to the property therein described,
on the 14th day of October, A. D. 1881, they accepted, in perfect good faith and relying on the aforesaid premises and undertakings, the draft of said Du Bois, and in due course of time, to wit, on the 17th day of October, 1881, the plaintiff obtained, by means of said premises, from these defendants the sum of seventeen hundred and ten dollars in cash.

III. That on the 17th day of October, 1881, the plaintiff in this case, through its agents and correspondents, at Chicago and Milwaukee, caused to be presented to these defendants what purported to be a shipping receipt or bill of lading issued by the Chicago & Alton R. R. Co. under date of October 13th, 1881, at Kansas City, and reciting, among other things, that said railroad company had received from J. N. Du Bois 425 bundles green hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Order of shipper: Notify Goetz & Luening, Mil-
17 waukee, Wis."

That annexed to the aforesaid document there was an invoice or value-bill purporting upon its face to give the details of net weight at 24,862 lbs., and aggregate value or market price at $2,527.81, and making to reference to sight draft at $\frac{2}{3}$ of value, viz., for $1,685, and accompanying said papers and attached thereto so as to form part and parcel of the same transaction, there was a draft dated at Kansas City, October 12th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these defendants, whereby these defendants were requested to pay at sight to the order of E. K. Thornton, cashier, sixteen hundred and eighty-five dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs, at the time, were familiar with the signature and handwriting of said J. N. DuBois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent who was
18 purported to have signed and issued the aforesaid shipping receipt, and also were ignorant of the correctness of the accompanying invoice or value bill; that the shipping bill and draft, on examination, were found to be endorsed as is hereinbefore particularly set forth as to the draft and bill of lading, dated October 12th, 1881, while the endorsement of the invoice or value bill was omitted.

That deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the preceding transaction, and influenced by said premises to desist from further inquiries into the facts, and believing, at the time from the circumstances of the case, that in this, as in the previous instance, the plaintiff had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt by said plaintiff they, these defendants, would become the owners in law and in fact of the property therein described, on the 17th day
19 of October, 1881, they accepted, in perfect good faith, and

relying on the aforesaid premises, the draft of said Du Bois, and in due course of time, to wit, on the 21st day of October, 1881, the plaintiff obtained from these defendants, by means of said premises, the sum of sixteen hundred and eighty-five dollars in cash.

IV. That on the 20th day of October, A. D. 1881, the plaintiff in this action, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these defendants what purported to be a shipping receipt or bill of lading issued by the Chicago and Alton R. R. Co. under date of October 17th, 1881, at Kansas City, and reciting among other things that said railroad company had received from J. N. Du Bois 450 green hides, of the weight, subject to correction, of 23,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Order. Notify Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an in-
20 voice or value bill purporting upon its face to give the details of net weight at 29,555 lbs., and aggregate value or market price at $3,066.01, and making reference to sight draft for $2,000.00, and accompanying said papers and attached thereto, so as to form part and parcel of the same transaction, there was a draft dated at Kansas City, Oct. 17th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these defendants, whereby these defendants were requested to pay at sight to the order of E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these defendants at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent who was purported to have signed and issued the shipping receipt, and also were ignorant of the correctness of the accompanying in-
21 voice or value bill. That the said shipping receipt was endorsed as follows: "J. N. Du Bois, p. J. Mac Lellan;" and that said draft accompanying said bill of lading and invoice and annexed thereto, as aforesaid, was endorsed as follows:

"Pay L. J. Gage, cashier, or order, for collection on account of Bank of Kansas City. E. K. Thornton, cashier." (Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for the plaintiff, as hereinbefore particularly stated.)

And these defendants further show, that deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the two preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time, from the circumstances of the case, that in this as in the previous instances, the plaintiff had become the owner by transfer from said Du Bois of the merchandise in question, and that on delivery of the shipping receipt by said plaintiff they,

22 these defendants, would become the owners in law and in fact of the property therein described, on the 20th day of October, 1881, they, relying on the aforesaid premises and in perfect good faith, accepted said draft of said Du Bois, and in due course of time, to wit, on the 24th day of October, 1881, the plaintiff obtained from these defendants by means of said premises the sum of two thousand dollars in cash.

V. That on the 22nd day of October, A. D. 1881, the plaintiff in this action, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these defendants what purported to be a shipping receipt or bill of lading issued by the Chicago and Alton R. R. Co. under date of October 19th, 1881, at Kansas City, and reciting among other things that said R. R. Co. had received from J. N. Du Bois 450 G. S. hides of the weight, subject to correction, of 2,200 lbs. to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Goetz & Luening, Milwaukee, Wis."

23 That annexed to the aforesaid document there was an invoice or value bill, purporting upon its face to give the details of net weight at 28,954 lbs., and aggregate value or market price at $3,037.07, and making reference to sight draft for $2,000.00, and accompanying said papers and attached thereto, so as to form part and parcel of the same transaction, there was a draft dated at Kansas City, Oct. 19th, 1881, drawn by J. N. Du Bois per J. Mac Lellan, upon these defendants, whereby these defendants were requested to pay at sight to the order of E. K. Thornton, cashier, two thousand dollars, value received and charge the same to account of the aforesaid drawer.

That these defendants, at the time, were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent, by whom said shipping receipt was purported to have been signed and issued, and also were ignorant of the correctness of the accompanying

24 invoice or value bill.

That said shipping receipt or bill of lading was endorsed as follows: "J. N. Du Bois p. J. Mac Lellan," and that said shipping receipt and said invoice or value bill, and said draft attached to them, severally were and each and every of them was also endorsed as follows:

"Pay L. J. Gage, cashier, or order for collection acc't of bank of Kansas City.

E. K. THORNTON, *Cashier.*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent, merely for the plaintiff, as hereinbefore particularly stated.)

And these defendants further show that deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates and endorsements relating to this and the said several preceding transactions, and influenced by

said premises to desist from further inquiries into the facts,
25 and believing at the time from the circumstances of the case, that in this as in the said several previous instances the plaintiff had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt by said plaintiff, they, these defendants would become the owners in law and in fact of the property therein described, on the 22d day of October, 1881, they, in perfect good faith and relying on the aforesaid premises, accepted the said draft of said Du Bois, and in due course of time, to wit, on the 21st day of October, 1881, the plaintiff obtained from these defendants, by means of said premises, the sum of two thousand dollars in cash.

VI. These defendants further show that on the 28th day of October, 1881, the defendant in this case, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these defendants what purported to be a shipping receipt or bill of lading, issued by the Chicago and Alton R. R. Co., under date of October 24th, 1881, at Kansas City, and reciting, among other things,
26 that said railroad company had received from said J. N. Du Bois 450 green hides, to be transported on the line of said railroad from said Kansas City to Milwaukee, to be delivered to the consignee or owner at Milwaukee, and consigned: "Order. Notify Goetz and Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or value bill, so called, purporting upon its face to give the details of net weight and aggregate value or market price of such supposed hides, and making reference to a sight draft for $2,000.00, being about two-thirds of the aggregate value, which said invoice is in the words and figures following, to wit:

"Invoice No. —.

"Lot No. —. KANSAS CITY, MO., *October*, 1881.

"Shipped by J. N. Du Bois via Chicago and Alton R. R., to Milwaukee, Wis., consigned to order. Notify Goetz & Luening, Milwaukee, Wis.

	Marks and numbers.			
250 bdls.	250 G. S. P'ker, steers	17,859, 11c.,	1,964	49
200 "	200 " cows	11,219, 9¾,	1,093	86
450	450	29,078	3,068	35
	Sight draft		2,000	00
			$1,068	35"

27 VII. And accompanying said papers and attached thereto so as to form part and parcel of the same transaction there was the draft mentioned in the plaintiff's complaint, which said draft was drawn by said J. N. Du Bois, per J. Mac Lellan. That these defendants at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan (who they had

reason to believe to be Du Bois' book-keeper and correspondent), but that they were not acquainted with the signature of the railroad agent by whom the aforesaid shipping receipt or bill of lading was purported to have been signed and issued, and also were ignorant of the correctness of the accompanying invoice or value bill. That upon examination of said papers it was ascertained that said shipping receipt or bill of lading was endorsed "J. N. Du Bois," and that said draft was endorsed substantially as follows: "Pay L. J. Gage, cashier, or order, for collection, on account of Bank of Kansas City. E. K. Thornton, cashier," (said Thornton being then the cashier of said plaintiff bank, and said Gage being then the cashier and
28 an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for the plaintiff bank, as hereinbefore stated.)

And these defendants further show that, deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to the said transaction, as well as by all the aforementioned divers other similar transactions occurring prior thereto and since the 11th day of October, 1881, by and between said plaintiff bank and said Du Bois and Mac Lellan, on the one side, and these defendants, on the other, and influenced by said premises to desist from further inquiries into the facts, and believing at the time, from the circumstances of the case, that in this as in the said previous instances the plaintiff had become the owner by transfer from said Du Bois of the merchandise in question, and that on delivery of the shipping receipt or bill of lading by said plaintiff they, these defendants, would become the owners in law and in fact of the property therein
29 described, on the 28th day of October, 1881, they, these defendants, in perfect good faith, and relying on the aforesaid premises, accepted the said draft; but that afterwards they were informed of facts and circumstances hereinafter more fully set forth, by which they were led to believe that said supposed shipping receipt or bill of lading was a forgery, and that all the shipping receipts forming part of said previous transactions were also forgeries, and that said bank plaintiff had not acted in good faith in obtaining said acceptance mentioned in the complaint; and therefore when said papers and documents were presented to them they refused, and have since refused, to honor said acceptance.

And these defendants further show that towards the end of the month of October, 1881, they became somewhat uneasy because the arrival of the shipment mentioned in said bill of lading, as well as other shipments pertaining to said previous similar transactions, at the point of destination was unduly delayed, and not even the first of the several car loads of hides called for by said shipping
30 receipts had come to their hands, but that for a time all suspicion on part of these defendants was allayed by the repeated statements of said Du Bois, that in consequence of high water in the Mississippi and its tributaries, freight on all lines west had been intercepted and blocked. That towards the 31st day of October, 1881, and just prior to the maturity of the above-mentioned acceptance,

information came to these defendants that the said several shipping receipts or bills of lading, (including the one to which said draft mentioned in said complaint was annexed as aforesaid), all and singular, were forgeries, and that no such shipments, in point of fact, were made, which information upon further inquiry proved to be correct, and these defendants now charge the fact accordingly.

These defendants further show that owing to the great distance between their place of business and Kansas City they had no knowledge of the moral or financial standing of said J. N. Du Bois, and never, prior to the transactions herein alluded to, had they any
31 business dealings with him in hides or other commodities.

That, as these defendants have of late been informed, said Du Bois for several years past was in very bad repute in business circles at his home and place of business; that repeatedly of late years he had been caught and detected in various crooked business transactions, and, among others, in issuing, under circumstances very similar to those disclosed here, forged bills of lading and shipping receipts, on the strength of which he had raised money through banks and by means of drafts drawn by him upon parties residing abroad, and that such evil practices had become a matter of notoriety at Kansas City.

That long prior to the occurrences hereinbefore stated the officers of said plaintiff bank were well acquainted with said Du Bois, and had full knowledge of his crookedness and evil disposition; that the repeated previous forgeries of shipping receipts and other papers on part of said Du Bois, although unknown to these defendants, were brought at the time to the notice of said plaintiff and its offi-
32 cers; that said bank was informed, prior to the drawing of the said draft mentioned in said complaint, of the arrangement and agreement between these defendants and said Du Bois relating to the shipping of hides in the manner aforesaid, and well knew that said draft, bill of lading, and invoice were part and parcel of the same transaction as aforesaid, and that the said Du Bois had no credits to his accounts with these *plaintiffs* upon which to draw, and that said draft would not have been accepted unless the drawers had been made to believe, and actually did believe, that the shipping receipt represented in fact and in law the title and actual ownership to certain property therein referred to.

And these defendants further allege that said banking plaintiff was not, at the time of the transfer of said paper to it, a purchaser in good faith; that it did not, in point of fact, purchase the same in the ordinary course of business, nor for value; and on information and belief these defendants allege that the plaintiff bank allowed itself to be made a party to a fraudulent scheme on the part of said
33 Du Bois and gave color and credence to the papers and documents above referred to by allowing its name to be used in connection therewith to the great injury of these defendants who acted in perfect good faith and with due care and diligence; whereas but slight inquiry would have revealed to said bank the fact that said bill of lading was forged; that the plaintiff had every reason to believe that its endorsement of said draft and the presentation on its

behalf to these defendants of the bill of lading endorsed as aforesaid, and of said invoice or value bill—all annexed to said draft—would be taken and considered by these defendants as a guaranty of their correctness, and that the party so endorsing and certifying was personally cognizant of the facts stated in said documents, and that as already before stated, these defendants actually did so believe and were misled thereby, and in consequence thereof desisted from further inquiry in that behalf; that on presenting said draft for acceptance together with said shipping receipt or bill of lading,
34 endorsed by said Du Bois as aforesaid, thereto attached, together with said invoice or value bill, the plaintiff represented itself to be the owner of the property particularly described as to quality, net weight, and value, in the invoice or value bill which was annexed, and that it was willing and ready to transfer the said property upon acceptance and payment of said accompanying draft, and that relying upon such representation and guaranty of title these defendants were induced to accept said draft, and then and there, in good faith, did accept the same as aforesaid; whereas in truth and in fact said evidences of ownership were forged as aforesaid and no property whatever at any time came to the possession of or was ever tendered to these defendants by means thereof; and on information and belief these defendants allege that said plaintiff bank actually connived at and colluded with said Du Bois in obtaining said acceptance from these defendants; and in that behalf these defendants allege that when they received notice of the forgery of said shipping receipt or bill of lading, they promptly
35 communicated the fact to the plaintiff in this case, and requested steps to be taken to apprehend said Du Bois and bring him to justice, but the plaintiff, in gross disregard of the interests of these defendants and of the public at large, refrained from all proceedings in that behalf, and allowed said Du Bois to abscond from the country.

And these defendants assert that whereas their said acceptance of said draft mentioned in the complaint was obtained by means of said many fraudulent acts and practices hereinbefore mentioned, in part participated in and in part connived at by the plaintiff as aforesaid, they, these defendants, ought not to be held to have incurred any liability, legal or equitable, on account of their said acceptance of said draft.

For a second and separate defense herein, and by way of counterclaim, these defendants allege, on information and belief, that on or about the 28th day of October, 1881, at said Kansas City, said Joseph N. Du Bois, the drawer of the said draft mentioned in the complaint, did procure from said Chicago and Alton R. R.
36 Co. a true and genuine bill of lading, or shipping receipt, reciting among other things, as the fact was, that said railroad company had received from said Du Bois 450 green hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Order. Notify Goetz & Luening, Milwaukee, Wis."

That thereupon said Du Bois, by said J. Mac Lellan, his said bookkeeper and correspondent, endorsed said bill of lading, as follows: "J. N. Du Bois, per J. Mac Lellan," and that thereupon said Du Bois caused to be annexed to said bill of lading an invoice or value-bill, giving the details of net weight of said hides at 29,078 lbs., and the aggregate or market price thereof at $3,068.35; that thereupon said Du Bois caused said shipping receipt or bill of lading with said invoice or value bill to be sent and delivered to these defendants in part satisfaction of their previous claims against him, but that afterwards, by means unknown to these defendants, the plain-
37 tiff herein obtained possession of said bill of lading or shipping receipt and invoice thereto annexed, and by means thereof obtained possession of said car-load of hides, which were then and there actually worth about two thousand dollars; and that afterwards, and before the commencement of this action, the plaintiff disposed of all and singular the said merchandise to its own use.

Wherefore these defendants pray for judgment against the plaintiff, adjudging their said acceptance of said draft to be null and void, dismissing plaintiff's complaint, and that they have and recover of and from said plaintiff, upon their said counter-claim, the sum of two thousand dollars' damages, with interest thereon from October 28th, 1881, besides the costs of this action.

COTZHAUSEN, SYLVESTER & SCHEIBER,
Defendants' Att'ys.

EASTERN DISTRICT OF WISCONSIN, *ss:*

August W. Goetz, Jr., being duly sworn, says: That he is one of the defendants in the above-entitled action; that he makes this verification for himself and for his codefendant, who is united in
38 interest with deponent in said action; that deponent is acquainted with the facts set forth in said answer; that said answer is true to deponent's own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

A. W. GOETZ, JR.

Subscribed & sworn to before me, this 25th day of February, 1882.
FRED. SCHEIBER,
Notary Public, Milwaukee Co., Wis.

APRIL 12, 1882.

This day came the plaintiff, by its attorneys, and filed its reply as follows:

Reply of Plaintiff.

Circuit Court of the United States, Eastern District of Wisconsin.

BANK OF KANSAS CITY, Pl'ff,
vs.
AUGUST W. GOETZ, JR., and AUGUST F. LUENING, Def'ts.

The above-named plaintiff, by Finches, Lynde & Miller, its attor-

neys, replies to the counter-claim set forth in the answer of
39 the said defendants to the plaintiff's complaint herein, and denies each and every allegation of the said answer respecting the same.

FINCHES, LYNDE & MILLER,
Pl'ff's Att'ys.

STATE OF MISSOURI, }
Jackson County, } *ss:*

E. K. Thornton, being first duly sworn, on oath says: That he is the cashier of the Bank of Kansas City, the plaintiff above named; that he has read the foregoing reply and knows the contents thereof, and that the same is true of his own knowledge.

Deponent further says that the reason why this verification is not made by the plaintiff is, that it is a corporation; that deponent is an officer of the same, to wit, the cashier, and that the knowledge is derived from his connection with and management of the matters and things upon which this action is founded, and his personal knowledge and dealings with and respecting the same.

E. K. THORNTON.

Subscribed and sworn to before me, this 3rd day of April, 1882.
[SEAL.] J. E. GUINOTTE,
Notary Public, Jackson County, Missouri.

40 STATE OF MISSOURI, }
County of Jackson, } *ss:*

I, Wallace Laws, clerk of the circuit court of Jackson county, State of Missouri, do hereby certify that on the 3rd day of April, 1882, J. E. Guinotte, before whom the foregoing reply was sworn to, was a duly commissioned and qualified notary public within and for the county of Jackson and State of Missouri, and his acts as such entitled to full force and effect.

In testimony whereof I have hereunto set my hand & affixed the seal of the said court at office in Kansas City, this 7th day of April, 1882.

[SEAL.] WALLACE LAWS, *Clerk.*

Order of Consolidation.

AUGUST 7, 1882.

This day came the parties by their counsel, and, on motion of Mr. Cotzhausen for the defendants, it is ordered by the court that this cause be, and hereby is, consolidated with the cause entered as No. 119 in this docket, wherein the defendants in this cause are plaintiffs and the plaintiff in this cause is defendant.

41 At a stated term of said court, begun and held according to law at the city of Oshkosh, in the eastern district of Wisconsin, on the second Tuesday (being the eleventh day) of July, A. D. 1882, and on the first day of said term, to wit, on the 11th day of July, A. D. 1882, the following proceedings were had, to wit:

Order Docketing Case on Removal from State Court.

AUGUST W. GOETZ, JR. & AUGUST F. LUENING,
vs.
BANK OF KANSAS CITY. } At Law.

This day came the defendant, by its attorneys, Messrs. Finches, Lynde & Miller, and presented to the court copies of the process, complaint and proceedings in this cause certified from the circuit court for Milwaukee county in this district, including copies of the petition of said defendant, for the removal of the cause to this court, and of the bond required by law for such removal, and of the order of said court, removing said cause to this court. Whereupon it is ordered by the court, that the said copies be filed, and that the cause be entered on the law docket of this court, and be proceeded with in the same manner as if it had been commenced here by original process.

Which said copies are as follows, to wit:

42 *Copies of Papers and Proceedings in State Court.*

Circuit Court, Milwaukee County.

A. W. GOETZ and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

The State of Wisconsin to the said defendant:

You are hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid: and in case of your failure so to do judgment will be rendered against you according to the demand of the complaint.

COTZHAUSEN, SYLVESTER & SCHEIBER,
Plaintiff Attorneys.

P. O. address, Milwaukee, Milwaukee Co., Wis.

MILWAUKEE COUNTY, *ss:*

I certify that after using due diligence search and inquiry, I could not find the within named defendant the Bank of Kansas City, or any duly authorized agent of the said defendant named herein, in my county on whom this summons could be served. I am informed and belief the information to be true, that they are not
43 residents of this State, but reside in the State of Missouri.

Milwaukee, November 17th, 1881.

Fees $1.00.

JOHN RUGEE, *Sheriff.*
By PETER VAN VECHTEN,
Under Sheriff.

(Endorsed:) Filed Nov. 19, 1881. J. Wechselberg, clerk.

Writ of Attachment.

Circuit Court, Milwaukee County.

THE STATE OF WISCONSIN:

AUGUST W. GOETZ, Jr. and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

We, the undersigned disinterested freeholders of said county, having been summoned by the sheriff of said county, to appraise certain property, seized by said sheriff by virtue of a writ of attachment issued out of the circuit court for Milwaukee county, in the above entitled action, and having first been duly sworn by said sheriff to make a true appraisal thereof, do hereby certify that we have appraised the same as follows, to wit:

124 hides, No. 1 branded cows: Gross weight	6,919		
Tare	248		
44 $8\frac{3}{4}$ cts.	6,671	583	69
19 No. 1 light-branded steers: Gross weight	1,073		
Tare	38		
$8\frac{3}{4}$ cts.	1,035	90	56
172 No. 1 light cows, no brand: Gross weight	8,673		
Tare	344		
$9\frac{3}{4}$ cts.	8,329	812	07
30 No. 1 heavy cows, no brand: Gross weight	1,977		
Tare	60		
9 cts.	1,917	172	53
8 No. 1 steers, no brand: Gross weight	508		
Tare	16		
$10\frac{1}{4}$ cts.	492	50	43
6 bulls: Gross weight	520		
Tare	12		
6 cts.	508	30	48
42 No. 2 hides: Gross weight	2,026		
Tare	84		
$7\frac{3}{4}$ cts.	1,942	150	51

31 hog skins, 20 cts.	----	6 20
18 calf skins, 75 cts.	----	13 50
Total amount—nineteen hundred and nine & $\frac{97}{100}$ dollars		1,909 97

November 16th, 1881.

FRED. VOGEL, JR.,
H. F. WHITCOMB,
Appraisers.

(Endorsed:) Filed Nov. 19, 1881. J. Wechselberg, clerk.

45 Circuit Court, Milwaukee County.

A. W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

STATE OF WISCONSIN, }
County of Milwaukee, } *ss:*

A. W. Goetz, Jr., being duly sworn, says: That he is one of the above-named plaintiffs, and makes this affidavit on their behalf; that the above-named defendant is indebted to the said plaintiffs in a sum exceeding fifty dollars, to wit, in the sum of seven thousand three hundred & ninety-five dollars, with interest on $1,710 thereof from October 17, 1881; on $1,685 thereof from October 21, 1881; on $2,000 thereof from October 24, 1881, and on $2,000 thereof from October 26, 1881, as near as may be, over & above all legal set-offs, and that the same is due upon contract express; that this deponent has good reason to believe, and verily does believe, that said defendant Bank of Kansas City is a foreign corporation, and that it, said defendant, is not a resident of this State.

A. W. GOETZ, JR.

46 Subscribed and sworn to before me, this 15th day of November, A. D. 1881.

GEORGE SYLVESTER,
Notary Public, Milwaukee Co., Wis.

(Endorsed:) Filed Nov. 19th, 1881. J. Wechselberg, clerk.

Circuit Court, Milwaukee County.

A. W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

The above-named plaintiffs having applied for a warrant of attachment against the property of the above-named defendant, I, Herman Toser, of the city of Milwaukee, State of Wisconsin, do undertake, pursuant to the statute in such case made and provided, in the sum of two hundred and fifty dollars, that if the said defendant recover

judgment in this action the above-named plaintiffs will pay all costs that may be awarded to the said defendant, and all damages which the said defendant may sustain by reason of the writ of attachment, not exceeding the sum above mentioned.

Dated November 15th, A. D. 1881.

HERMAN TOSER.

47 STATE OF WISCONSIN, } ss:
Milwaukee County, }

Herman Toser, being duly sworn, says: That he is one of the subscribers to the foregoing undertaking; that he is a resident and freeholder within this State, and is worth the sum of five hundred dollars in property within this State over and above all his debts, and exclusive of all property exempt from execution.

HERMAN TOSER.

Subscribed and sworn to before me, this 15th day of November, A. D. 1881.

GEORGE SYLVESTER,
Notary Public, Mil. Co., Wis.

(Endorsed:) Filed Nov. 19th, 1881. J. Wechselberg, clerk.

STATE OF WISCONSIN, *ss:*

Circuit Court for the County of Milwaukee.

The State of Wisconsin to the sheriff of the county of Milwaukee, Greeting:

Whereas an application has been made for a writ of attachment against the property of Bank of Kansas City, defendant in an action commenced in this court wherein A. W. Goetz, Jr., and Au-
48 gust F. Luening are plaintiffs, and annexed hereto is an affidavit and undertaking on the granting of this writ, pursuant to the provisions of chapter 124, entitled "of attachments," of the Revised Statutes of 1878;

And it appears from said affidavit that the whole amount due the said plaintiff is the sum of seven thousand three hundred and ninety-five dollars, with interest on $1,710 thereof from Oct. 17, 1881; on $1,685 thereof from Oct. 21, 1881; on $2,000 thereof from Oct. 24, 1881, & $2,000 thereof from the 26th day of October, 1881:

Now, you are hereby commanded to attach and safely keep all the property of the said defendant Bank of Kansas City in your county, or so much thereof as may be sufficient to satisfy the plaintiff's demand, together with the costs and expenses, as a security for the satisfaction of such judgment as the said plaintiff may recover in said action.

Witness the honorable David W. Small, judge of the said circuit court at Milwaukee, this 16th day of November, A. D. 1881.

JULIUS WECHSELBERG, *Clerk.*
By CHAS. E. WILD, *Deputy Clerk.*

49 COTZHAUSEN, SYLVESTER & SCHEIBER,
Plaintiff's Att'y.

MILWAUKEE COUNTY, *ss:*

I certify that at the city & county of Milwaukee, on the 16th day of November, A. D. 1881, at the hour of 2.20 p. m. of that day, by virtue of the within writ of attachment, I seized as the property of the within-named defendant, the Bank of Kansas City, more particularly described in an inventory hereto annexed and returned, and by said seizure I seized all the right, title, and interest of the within-named defendant, the Bank of Kansas City, subject to the prior lien of the C. A. & St. L. R. R. for charge for the sum of $15\frac{82}{100}$ dollars, and the C. N. W. R. R. to charges on way bill 503 for the sum of $64\frac{82}{100}$ dollars, making in all the sum of $80\frac{62}{100}$ dollars.

I further certify that I made an inventory of the property so attached and caused the same to be appraised by two disinterested freeholders, Fred. Vogel, Jr., and H. F. Whitcomb, who were first duly sworn by me to make a true appraisal thereof, which inventory and appraisal are hereto annexed and returned.

50 I further certify that after using due diligence, search, & inquiry, I could not find the within-named defendant the Bank of Kansas City, or any duly authorized agent of said Bank of Kansas City in my county on whom I could serve the within writ of attachment, affidavit, undertaking, and inventory. I hereby return the within writ of attachment, inventory, affidavit, and undertaking to the court, and that I now have the property in my possession.

Milwaukee, November 17, 1881.

JOHN RUGEE, *Sheriff,*
By PETER VAN VECHTEN,
Under Sheriff.

Fees, $93.07.

Circuit Court, Milwaukee County.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
against
BANK OF KANSAS CITY, Defendant.

Please take notice that we are retained by and appear for the defendant Bank of Kansas City in the above-entitled action, and we demand that a copy of the plaintiffs' complaint therein be

51 served upon us at our office, No. 102 Wisconsin St., Milwaukee, Milwaukee County, Wisconsin.

Yours, &c., FINCHES, LYNDE & MILLER,
Attorneys for Defendant.

Dated Milwaukee, Nov. 28, 1881.

To Messrs. Cotzhausen, Sylvester & Scheiber, attorneys for plaintiffs.

(Endorsed:) Filed Nov. 28, 1881. J. Wechselberg, clerk.

Circuit Court, Milwaukee County.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

STATE OF WISCONSIN, } ss:
Milwaukee County, }

August F. Luening, being first duly sworn, on oath deposes and says: That he is one of the plaintiffs in this cause; that a writ of attachment was issued in this action, directed to the sheriff of Milwaukee county, commanding him to attach and safely keep the property of the above-named defendant in his county, according to the statute in such case made and provided, as will appear by
52 the record and files herein, and to which defendant refers for further particulars and certainty; that by virtue of said writ of attachment the said sheriff duly levied upon four hundred and fifty hides of various kinds, the property of the above-named defendant, as will appear by the return of said sheriff upon said writ of attachment, and the inventory and appraisal thereof, annexed to said writ, on file herein.

That the property so levied upon consists of green hides which are insufficiently salted, by reason thereof the same are likely to perish or depreciate in value greatly before the probable end of this action, and are even now showing signs of such depreciation; and that the keeping thereof is attended with much loss and expense, both for custody and storage, amounting to several dollars per day. Wherefore deponent prays an order of this court, directing the said hides to be sold, in such manner and upon such time and terms as the best interests of the parties demand, and the money realized therefrom be held by the said sheriff in lieu of the property
53 so sold, according to the statute in such case made and provided.

AUGUST F. LUENING.

Subscribed and sworn to before me, this 1st day of December, A. D. 1881.

GEO. L. JONES,
Notary Public, Milwaukee Co., Wis.

Circuit Court, Milwaukee County.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

Upon the record, papers on file, and proceedings heretofore had in this action and upon the annexed affidavit of August F. Luening, one of the plaintiffs above named, and on motion of Cotzhausen, Sylvester & Scheiber, the attorneys for the above-named plaintiff, it is ordered that the above-named defendant show cause before this court, at the court-house in the city and county of Milwaukee, on

the 5th day of December, 1881, at the opening of court on that day,
or as soon thereafter as counsel can be heard, why an order
54 should not be entered herein, directing the property levied
upon in this action by virtue of a writ of attachment, and now in the possession of the sheriff, and particularly specified in the inventory and appraisal thereof annexed to said writ on file herein, should not be sold as perishable property, in such manner and upon such time and terms as the best interests of the parties demand, and the money realized therefrom be held by the said sheriff in lieu of the property so sold; and for such other and further relief in the premises as to the court may seem just and proper.

Let a copy of this order to show cause and annexed affidavit be served on Messrs. Finches, Lynde & Miller, the attorneys for the above-named defendant, on December 2nd, 1881.

Dated December 1st, 1881.

J. E. MANN,
County Judge

(Endorsed:) Filed Dec. 2, 1881. J. Wechselberg, clerk.

Circuit Court, Milwaukee County.

AUGUST W. GOETZ and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

55 The order to show cause on part of the named plaintiffs under date of December 1st, 1881, having come on to be heard whenever the above-named defendant was required to show cause why an order should not be entered herein directing the property levied upon in this action, by virtue of a writ of attachment and now in the possession of the sheriff, and particularly specified in the inventory and appraisal thereof annexed to said writ on file herein, should not be sold as perishable property, and Coltzhauser, Sylvester & Scheiber appearing in behalf of said plaintiffs, and no one appearing in behalf of said defendant, and the court being fully advised in the premises, it is hereby ordered that said property so levied upon, consisting of four hundred and fifty hides, of various kinds, now — the possession of the sheriff, and particularly specified in the inventory and appraisal thereof annexed to said writ of attachment on file herein, be sold at auction sale by the sheriff of Milwaukee county on the 13th day of
56 December, 1881, at ten o'clock in the forenoon of that day, at the warehouse of Goetz & Luening, No. 59 Oneida street, in the city and county of Milwaukee, Wisconsin, to the highest and best bidder therefor for cash, and that public notice be given of such sale by posting up three notices thereof in three public places in the city of Milwaukee, specifying the time & place of such sale, at least five days before said 13th day of December, 1881, and that the money realized from such sale be held by the said sheriff in lieu of

the property so sold, according to the statute in such case made and provided.

Dated December 5th, 1881.

By the court:

DAVID W. SMALL, *Judge*.

(Endorsed:) Filed Dec. 5th, 1881. J. Wechselberg, clerk.

Complaint.

Circuit Court, Milwaukee County.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

The complaint of the above-named plaintiffs, by Cotzhausen,
57 Sylvester & Scheiber, their attorneys, respectfully shows to this court, for a first cause of action:

I. That said plaintiffs now are, and more than one year last past have been, copartners doing business as commission merchants at the city of Milwaukee, Wisconsin, under and by the firm name and style of Goetz & Luening.

That the above-named defendant now is, and more than one year last past has been, a banking corporation organized and existing under & pursuant to the laws of Missouri, and doing business at Kansas City, in said State of Missouri.

That in or about the earlier part of October, 1881, one Joseph N. Du Bois, who then was a dealer in hides at said Kansas City, proposed to these plaintiffs to consign to them hides, from time to time, to be sold by them for him on commission. Whereupon these plaintiffs agreed with said Du Bois that he should ship & consign hides to them, from time to time, & that said Du Bois might draw his bills of exchange on the plaintiffs for ⅔ the value of such hides at Milwaukee.

That therefore, on or about the 11th day of October, 1881,
58 said Du Bois made his certain bill of exchange in writing, dated on that day, whereby he requested these plaintiffs at sight to pay to the order of E. K. Thornton, cashier of said defendant bank, the sum of seventeen hundred & ten dollars ($1,710), and charge the same to his account; that at the same time, to wit, on said 11th day of October, 1881, the said Du Bois annexed to said bill of exchange a pretended bill of lading, in writing, purporting to have been issued and made by the Chicago & Alton Railroad Company, a common carrier doing business at said Kansas City, and purporting to recite, among other things, that said railroad company had received from said Du Bois, on said 11th day of October, 1881, five hundred (500) green steer hides of the weight, subject to correction, of 22,000 pounds, to be transported on the line of railroad of said railroad company from Kansas City to Milwaukee, and to be delivered to the consignee or owner at said Milwaukee, & consigned: To the shipper's order: Notify Goetz & Luening, Milwaukee,

Wis.; and that the said Du Bois then and there also annexed
59 to said bill of exchange a pretended invoice or value bill, so called, in writing, made by him, reciting and representing that he had shipped, on said 11th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., consigned to order, notify Goetz & Luening, Milwaukee, Wis., 500 green steer hides of the net weight of 26,318 lbs., valued at 9¾ cents per lb., amounting to $2,566.00, and that a sight draft for ⅔ said value, $1,710, had been made on these plaintiffs; that therefore, on said 11th day of October, 1881, at said Kansas City, the said Du Bois duly endorsed the said pretended bill of lading in blank, & discounted with and transferred to said defendant bank the said bill of exchange and said pretended bill of lading, so by him endorsed, with said pretended invoice or value bill, all annexed and joined together, and that said defendant bank then & there purchased the same of said Du Bois in bad faith and with knowledge or reason to believe that said pretended bill of lading was a forgery and not issued
60 by said railroad company or with its authority and with knowledge or reason to believe that said Du Bois then and there had not delivered to said railroad company any hides whatever for shipment as was recited in said pretended bill of lading, and with knowledge or reason to believe that said pretended invoice or value bill was fraudulently made and annexed to said draft by said Du Bois, and that all the recitals therein contained were wholly untrue & false, and with knowledge or reason to believe that said plaintiffs would not accept or pay said draft without said pretended bill of lading & invoice thereto annexed and therewith presented, and that said defendant bank then and there applied the proceeds of said draft upon a larger pre-existing indebtedness then owing said bank by said Du Bois, & gave or paid said Du Bois no new or other consideration therefor.

That afterwards, on said 11th day of October, 1881, the said defendant bank duly endorssd the said bill of exchange and said pretended bill of lading & said pretended invoice, or value bill,
61 all thereto annexed for collection, and caused the same to be forwarded to Milwaukee for collection; and that on the 14th day of October, 1881, at the instance & request of said defendant bank, the said bill of exchange, with both said pretended bill of lading & said pretended invoice, all thereto annexed, were presented to these plaintiffs for acceptance, and that they then & there, to wit, on said 14th day of October, 1881, did accept the said bill of exchange, and that at maturity thereof they paid thereon the said sum therein specified, to wit, $1,710. That at the time said acceptance & payment were made by these plaintiffs as aforesaid, they believed that said pretended bill of lading was genuine and actually made by said railroad company, and that said Du Bois had actually shipped the said pretended hides as therein represented, and said plaintiffs then and there relied, as a ground for such belief, wholly upon the guaranty in law given by the aforesaid endorsements of said defendant bank appearing on said draft & on said
62 pretended bill of lading & invoice thereto annexed; that

said pretended bill of lading was genuine as aforesaid, and that said bank was the lawful owner of said draft, & actually held & controlled as legal owner the said supposed hides referred to in said pretended bill of lading & invoice, and that the same were then in due course of shipment, ready to be delivered upon payment of said draft; but that in truth & in fact the said pretended bill of lading was a forgery made & uttered by said Du Bois, or some person for him, & was never issued or made by said railroad company, or by its authority, and that in truth & in fact said railroad company never received from said Du Bois any of the supposed hides therein referred to for transportation or shipment as was therein recited, and that said invoice or value bill was fraudulently made by said Du Bois, and all the recitals therein contained were wholly untrue and false; all of which facts were unknown
63 to these plaintiffs at the time they accepted and paid said draft as aforesaid. And these plaintiffs further allege that if they had known all or any of the facts last above set forth at the times they accepted or paid said draft they would not have accepted or paid the same, nor would they have accepted or paid said draft, if said pretended bill of lading and invoice had not been thereto annexed & presented therewith as aforesaid. These plaintiffs further allege that by reason of the premises the said defendant bank has had and received from these plaintiffs the said sum of seventeen hundred & ten dollars without any consideration therefor whatever, and the said defendant then & there by reason of said premises became and now is indebted to these plaintiffs in the said sum of $1,710.00, with interest thereon from the 17th day of October, 1881, no part whereof has been paid, although before the commencement of this action payment thereof was demanded from said defendant by these plaintiffs.

64 II. And for a further and separate cause of action herein these plaintiffs allege:

That they are and have been copartners in the business of commission merchants; that the defendant is & has been a banking corporation doing business at Kansas City, and that the plaintiffs negotiated with said Du Bois and agreed with him in relation to consignments of hides by him to them, all of which facts are above more fully set forth at folios 1, 2, & 3, which averments these plaintiffs beg leave for greater particularity to refer to, & the same are made a part hereof.

These plaintiffs further allege that thereupon, to wit, on the 13th day of October, 1881, the said Joseph N. Du Bois, at said Kansas City, made his certain other bill of exchange in writing, dated as of the 12th day of October, 1881, wherein & whereby he requested these plaintiffs at sight to pay to the order of E. K. Thornton, cashier of said defendant bank, sixteen hundred eighty-five dollars ($1,685), and charge the same to his account. That thereupon on the same day last aforesaid, at said Kansas City, said DuBois
65 annexed to said bill of exchange, or draft, a pretended other bill of lading in writing purporting to have been made and issued by said Chicago & Alton Railroad Company, a common car-

rier doing business at said Kansas City, and purporting to recite, among other things, that the said railroad company had received from said Du Bois on said 13th day of October, 1881, four hundred twenty-five (425) bundles green hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of railroad of said company from said Kansas City to said Milwaukee and to be delivered to consignee or owner, and consigned to order shipper notify Goetz & Luening, Milwaukee, Wis., and that the said DuBois then & there also annexed to said bill of exchange a pretended invoice or value bill in writing, made by him, reciting and representing among other things that he had shipped on said 13th day of October, 1881, via said Chicago & Alton railroad to Milwaukee, Wis.,

66 "consigned to order notify Goetz & Luening, Milwaukee, Wis.," 125 Green steer hides of the weight of 8,301 lbs., valued at 11 cents per lb., amounting to $913.11, and 300 green cow hides of the weight of 16,561 lbs., valued at 9¾ per lb., amounting to $1,614.70, being in all 24,862 lbs., valued at $2,527.81, and that a sight draft for ⅔ said value, $1,685, had been made on these plaintiffs.

That thereupon, on said 13th day of October, 1881, at said Kansas City, the said Du Bois duly endorsed said pretended bill of lading in blank, & then & there discounted with and transferred to said defendant bank the said bill of exchange and said pretended bill of lading so by him endorsed, with said pretended invoice, all annexed and joined together, and that said defendant bank then and there purchased the same of said Du Bois in bad faith and with knowledge or reason to believe that said pretended bill of lading was a forgery and not issued or made by said railroad company or with its authority, and with knowledge or reason to believe that said Du

67 Bois then & there had not delivered to said railroad company any Hides whatever for shipment, as was therein recited, and with knowledge or reason to believe that said pretended invoice or value bill was fraudulently made by said Du Bois, and that all the recitals therein contained were wholly untrue & false, and with knowledge or reason to believe that these plaintiffs would not accept or pay said draft without said pretended bill of lading & invoice thereto annexed & therewith presented to them, and that said defendant bank then & there applied the proceeds of said draft upon a larger pre-existing indebtedness then owing said bank by said Du Bois, & gave or paid said Du Bois no new or other consideration therefor.

That afterwards, on said 13th day of October, 1881, the said defendant bank duly endorsed the said draft, with said pretended bill of lading & said pretended invoice all thereto annexed, for collection, and caused the same to be forwarded to Milwaukee for collection; and that on the 17th day of October, 1881, at the instance &

68 request of said defendant bank, the said bill of exchange, with said pretended bill of lading & said pretended invoice all thereto annexed, as aforesaid, was presented to these plaintiffs for acceptance, & that they then & there accepted the same, and

that at maturity they afterwards paid their said acceptance in said sum of $1,685.00.

That at the time said acceptance & payment were made by these plaintiffs as last aforesaid they believed that said pretended bill of lading was genuine, and actually made by said railroad company, and that said Du Bois had actually shipped the said pretended hides as therein recited & represented, and that said plaintiffs were then & there induced so to believe as aforesaid, by the fact that the defendant bank on the 11th day of October, 1881, & but two days prior to the date of said last-mentioned draft & papers annexed, had endorsed another bill of exchange and another pretended bill of lading & invoice thereto annexed, as in above set forth at folio 7, and by such endorsement held the papers so endorsed out to be genuine,
69 which said draft & annexed papers of October 11th, 1881, were in all respects respectively made and written in the identical same handwriting as were the said draft & papers annexed, bearing date October 13th, 1881, as aforesaid, and by the further fact that all said papers, both of October 11th & Oct. 13th, had come from & been presented at request of the same defendant bank, and more especially by the further fact that by the presentation of said draft of October 13th, endorsed by said bank for collection, with said pretended bill of lading endorsed by said Du Bois & said invoice thereto annexed, it was made to appear & represented by said bank that said defendant bank then & there actually held & controlled as legal owner the said supposed hides referred to in said pretended bill of lading & invoice, & that the same were then in due course of shipment, ready to be delivered upon payment of said draft, but that in truth and in fact the said pretended bill of lading, of October 13th was a forgery made & uttered by said Du Bois or some person for
70 him, & was never issued or made by said railroad company, or by its authority, and that in truth and in fact said railroad company never received from said Du Bois any of the supposed hides therein referred to for transportation or shipment, as was therein recited, and that said invoice or value bill of October 13th, with said forged bill of lading annexed to said draft of same date, was fraudulently made by said Du Bois, and that all the recitals therein contained were wholly untrue and false, all of which facts were unknown to these plaintiffs at the time they accepted and paid said draft of October 13th, 1881, as aforesaid.

And these plaintiffs further show that if they had known all or any of the facts last above set forth at the time they accepted or paid said last-mentioned draft they would not have accepted or paid the same; nor would they have accepted or paid said draft if said pretended bill of lading & invoice had not been thereto annexed & therewith presented to them as aforesaid. These plaintiffs further allege that by reason of the premises the said defendant bank has had and received from these plaintiffs the said sum of sixteen hundred eighty-five dollars without any consideration therefor
71 whatever, & that said defendant then and there, by reason of said premises, became, and still is, indebted to these plaintiffs in said sum of $1,685.00, with interest thereon from the 21st day of

October, 1881, no part whereof has been paid, although payment thereof has been demanded from the defendant before the commencement of this action.

III. And for a third and separate cause of action herein these plaintiffs allege:

That they are and have been copartners in the business of commission merchants; that the defendant is & has been a banking corporation doing business at Kansas City; and that the plaintiffs negotiated with said Du Bois & agreed with him in relation to consignments of hides to them, all of which facts are above more fully and at length set forth at folios 1, 2, & 3, & to which averments these plaintiffs beg leave, for greater particularity, to refer, & the same are made a part hereof.

These plaintiffs further allege that on the 17th day of October, 1881, the said Joseph N. Du Bois, at said Kansas City, made his certain other draft in writing, dated on that day, wherein & whereby he requested these plaintiffs, at sight, to pay to the order of
72 E. K. Thornton, cashier of said defendant bank, two thousand dollars ($2,000.00), and charge the same to his account.

That thereupon, on the same day last aforesaid, at said Kansas City, the said Du Bois annexed to said draft a pretended other bill of lading, in writing, purporting to have been made and issued by said Chicago & Alton Railroad Company, a common carrier doing business at said Kansas City, and purporting to recite, among other things, that the said railroad company had received from said Du Bois, on said 17th day of October, 1881, four hundred fifty (450) green hides of the weight, subject to correction, of 23,000 lbs., to be transported on the line of railroad of said company from said Kansas City to said Milwaukee, and to be delivered to consignee or owner, and consigned to order, notify Goetz & Luening, Milwaukee, Wis.; and that the said Du Bois then & there also annexed to said draft a pretended invoice or value bill, in writing, made by him, reciting and representing, among other things, that he had shipped, on said 17th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., consigned to order, notify Goetz &
73 Luening, Milwaukee, Wis., 450 bundles hides, being 250 steer hides of the weight of 17,219 lbs., valued at 11 cents per lb., amounting to $1,894.09, and 200 cow hides for sole leather of the weight of 12,336 lbs., valued at 9½ cents, amounting to $1,171.92, being in all 29,555 lbs., valued at 3,066.01, and that a sight draft for $2,000 had been made on these plaintiffs, & accompanied the aforementioned pretended bill of lading.

That thereupon, on said 17th day of October, 1881, at said Kansas City, the said Du Bois duly endorsed said pretended bills lading in blank, & then & there discounted with & transferred to said defendant bank the said draft and said pretended bill of lading so by him endorsed, with said pretended invoice, all annexed and joined together; and that said defendant bank then & there purchased the same of said Du Bois in bad faith and with knowledge or reason to believe that said pretended bill of lading was a forgery & not issued or made by said railroad company, or with its authority,

and with knowledge or reason to believe that said Du Bois
74 then & there had not delivered to said railroad company any hides whatever for shipment, as was therein recited, and with knowledge or reason to believe that said pretended invoice was fraudulently made by said Du Bois, and that all the recitals therein contained were wholly untrue and false, and with knowledge or reason to believe that said plaintiffs would not accept or pay said draft without said pretended bill of lading & invoice thereto annexed & therewith presented to them; and that said defendant bank then & there applied the proceeds of said draft upon a pre-existing larger indebtedness then owing said bank by said Du Bois, & gave or paid said Du Bois no new or other consideration therefor; that afterwards, on said 17th day of October, 1881, the said defendant bank duly endorsed the said draft with said pretended bill of lading & said pretended invoice all thereto annexed for collection, and caused the same to be forwarded to Milwaukee for collection, and that on the 20th day of October, 1881, at the instance & request of said defendant bank, the said draft, with said pretended bill of lading & said pretended invoice all thereto annexed, as aforesaid, was presented to these plaintiffs for acceptance, & that
75 they then & there accepted the same, and that at maturity they afterwards paid their said acceptance in said sum of $2,000.00; that at the time said acceptance & payment were made by these plaintiffs as last aforesaid they believed that said pretended bill of lading was genuine & actually made by said railroad company, and that said Du Bois had actually shipped the said pretended hides as therein recited & represented, and that said plaintiffs were then & there induced so to believe as aforesaid by the fact that the defendant bank, on the 11th day of October, 1881, & but six days prior to the date of said last-mentioned draft, had endorsed another pretended bill of lading & invoice, and another draft thereto annexed, as is above set forth at folio 7, and by such endorsement held out and represented the same to be genuine, which said papers of October 11th, 1881, were in all respects respectively made & written in the identical same handwriting as were the said draft & papers annexed, bearing date October 17th, 1881, as aforesaid, and by the further fact that all said papers, both of October 11th & October 17th, had come from & been presented at request
76 of the same defendant bank, and more especially by the further fact that by the presentation of said draft of October 17th, 1881, endorsed by said bank for collection, with said pretended bill of lading endorsed by said Du Bois, & said pretended invoice, all thereto annexed, it was represented & made to appear that said defendant bank then and there actually held and controlled, as legal owner, the said supposed hides referred to in said pretended bill of lading & invoice, & that the same were then in due course of shipment, ready to be delivered upon payment of said draft; but that, in truth and in fact, the said pretended bill of lading of October 17th, 1881, was a forgery made & uttered by said Du Bois or some person for him & was never issued or made by said railroad company or by its authority, and that, in truth & in fact, said railroad

company never received from said Du Bois any of the supposed hides therein referred to for transportation or shipment, as was therein recited, and that said pretended invoice of October 17th, 1881, was frudulently made by said Du Bois, and that all the
77 recitals therein contained were wholly untrue and false, all of which facts were unknown to these plaintiffs at the time they accepted & paid said draft of October 17th, 1881, as aforesaid, and these plaintiffs further show that if they had known all or any of the facts last-above set forth at the time they accepted & paid said last-mentioned draft they would not have accepted or paid the same, nor would they have accepted or paid said draft if said pretended bill of lading & invoice had not been thereto annexed & therewith presented to them as aforesaid.

These plaintiffs further allege that by reason of the premises the said defendant bank has had and received from these plaintiffs the said sum of two thousand dollars without any consideration therefor whatever, & that said defendant then & there, by reason of said premises, became & still is indebted to these plaintiffs in said sum of $2,000.00, with interest thereon from the 24th day of October, 1881, no part whereof has been paid, although payment thereof was demanded from the defendant before the commencement of this action.

78 IV. And for a fourth and separate cause of action herein, these plaintiffs allege:

That they are and have been copartners in the business of commission merchants, that the defendant is & has been a banking corporation doing business at Kansas City, and that the plaintiffs negotiated with Joseph N. Du Bois, & agreed with him in relation to consignments of hides to them, all of which facts are above more fully and at length set forth at folios 1, 2, & 3, which averments these these plaintiffs beg leave to refer to for greater particularity and the same are made a part hereof.

These plaintiffs further allege that on the 19th day of October, 1881, the said Joseph N. Du Bois, at said Kansas City, made his certain other draft in writing, dated on that day, wherein & whereby he requested these plaintiffs at sight to pay to the order of E. K. Thornton, cashier of said defendant bank, two thousand dollars ($2,000.00) and charge the same to his account. That thereupon on the same day last aforesaid, at said Kansas City, the said Du Bois
79 annexed to said draft a pretended other bill of lading in writing purporting to have been made and and issued by the Chicago & Alton Railroad Company, a common carrier doing business at said Kansas City, and purporting to recite, among other things, that the said railroad company had on said 19th day of October, 1881, received from said Du Bois four hundred fifty (450) green hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of railroad of said company, from said Kansas City to said Milwaukee; and to be delivered to consignee or owner, and consigned to these plaintiffs at said city of Milwaukee; and that the said Du Bois then & there also annexed to said draft a pretended invoice in writing, made by him, reciting, among other

things, that he had shipped on said 19th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., consigned to these plaintiffs at said city of Milwaukee, 200 bundles of green steer hides of the weight of 14,167 lbs., of the value of 11 cents per lb., amounting to $1,558.37, and 250 bundles of green cow hides of the weight of 14,787 lbs., of the value of 10 cents per lb., amounting to $1,478.70, being in all 28,954 lbs. of hides of the value
80 of $3,037.07, and that a sight draft for $2,000.00 had been made on these plaintiffs. That thereupon on said 19th day of October, 1881, at said Kansas City, the said Du Bois duly endorsed said pretended bill of lading in blank, & then & there discounted with & transferred to said defendant bank the said draft and said pretended bill of lading so by him endorsed, with said pretended invoice, all annexed and joined together, and that said defendant bank then & there purchased the same of said Du Bois in bad faith and with knowledge or reason to believe that said pretended bill of lading was a forgery & not issued or made by said railroad company or with its authority, and with knowledge or reason to believe that said Du Bois then & there had not delivered to said railroad company any hides whatever for shipment, as was therein recited, and with knowledge or reason to believe that said pretended invoice was fraudulently made by said Du Bois, and that all the recitals therein contained were wholly untrue and false, and with knowledge or reason to believe that these plaintiffs would not ac-
81 cept or pay said draft without said pretended bill of lading & invoices thereto annexed & therewith presented to them; and that said defendant then & there applied the proceeds of said draft upon a pre-existing larger indebtedness then owing said bank by said Du Bois & gave or paid said Du Bois no new or other consideration therefor.

That afterwards, on said 19th day of October, 1881, the defendant bank duly endorsed the said draft and said pretended bill of lading, and also said pretended invoice, all to said draft annexed, for collection, and caused the same to be forwarded to Milwaukee for collection, and that on the 22nd day of October, 1881, at the instance & request of said defendant bank the said draft, together with both said pretended bill of lading and said pretended invoice, all thereto annexed, were presented to these plaintiffs for acceptance, and that they then & there, to wit, on said 22nd day of October, 1881, did accept the said draft, and that at maturity thereof they paid their said acceptance in said sum of $2,000.00. That at the time said ac-
82 ceptance & payment were made by these plaintiffs as aforesaid they believed that said pretended bill of lading was genuine and actually made by said railroad company, and that said Du Bois had actually shipped the said pretended hides as therein represented, and that said plaintiffs then and there relied, as a ground for such belief, wholly upon the guaranty in law given by the aforesaid endorsements of said defendant bank appearing on said draft, & on said pretended bill of lading, and on said invoice thereto annexed; that said pretended bill of lading was genuine as aforesaid, and that said defendant bank was the lawful owner of said draft & actually

held and controlled as legal owner the said supposed hides referred to in said pretended bill of lading & invoice, and that the same were then in due course of shipment ready to be delivered upon payment of said draft; but that in truth & in fact the said pretended bill of lading was a forgery made & uttered by said Du Bois, or some person for him, and was never issued or made by said railroad company or its authority, and that in truth & in fact said
83 railroad company never received from said Du Bois any of the supposed hides therein referred to for transportation or shipment, as was therein recited, and that said invoice was fraudulently made by said Du Bois, and that all the recitals therein contained were wholly untrue and false; and these plaintiffs further show that if they had known all or any of the facts above set forth at the time they accepted or paid said last-mentioned draft they would not have accepted or paid the same, nor would they have accepted or paid said draft if said pretended bill of lading & invoice had not been thereto annexed & therewith presented to them as aforesaid.

These plaintiffs further allege that by reason of the premises the said defendant bank has had and received from these plaintiffs the said sum of two thousand dollars without any consideration therefor whatever, & the said defendant then & there by reason of said premises became & now is indebted to these plaintiffs in the said sum of two thousand dollars, with interest thereon from the 26th day
84 of October, 1881, no part whereof has been paid, although payment thereof was demanded of said defendant before the commencement of this action.

Wherefore these plaintiffs demand judgment against said defendant for the sum of seven thousand three hundred ninety-five dollars ($7,395.00), with interest on $1,710.00 thereof from the 17th day of October, 1881, and interest on $1,685.00 thereof from the 21st day of October, 1881, and interest on $2,000.00 thereof from the 24th day of October, 1881, and interest on $2,000.00 thereof from the 26th day of October, 1881, besides the costs of this action.

COTZHAUSEN, SYLVESTER & SCHEIBER,
Plaintiffs' Attorneys.

MILWAUKEE COUNTY, ss.

August F. Luening, being duly sworn, says: That he is one of the plaintiffs in the above-entitled action, and makes this verification for himself and for & in behalf of his coplaintiff, who is united in interest with him in said action. Deponent further says that the foregoing complaint is true to his own knowledge, except the matters therein stated on information & belief, and as to those matters he believes it to be true.

AUGUST F. LUENING.

85 Subscribed & sworn to before me, this 12 day of December, 1881.

GEORGE SYLVESTER,
Notary Public, Mil. Co., Wis.

(Endorsed:) Filed Dec. 13th, 1881. Julius Wechselberg, clerk.

Petition for Removal to U. S. Court.

Circuit Court, Milwaukee County.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
against
BANK OF KANSAS CITY, Defendant.

To the circuit court for Milwaukee county, Wisconsin:

The petition of the Bank of Kansas City, the above-named defendant, respectfully shows and alleges that at the date of the commencement of the above-entitled action, and prior thereto, it was, and still is, a corporation organized and existing under and by virtue of the laws of the State of Missouri, and that it was, and still is, a citizen of said State of Missouri, and that plaintiffs were, and still are, citizens of the State of Wisconsin; that the above-entitled action is now pending in the circuit court for Milwaukee county, Wisconsin; that the matter in dispute exceeds the sum or value of
86 $500.00, exclusive of costs, and that the term of this court commencing on the 1st Monday of May, 1882, is the first term of said court at which said cause could be tried, and that said cause has not yet been brought to trial, and your petitioner — a bond with John Johnson as good and sufficient security for its entering at the next term of the circuit court of the United States for the eastern district of Wisconsin, on the first day of its next session, a copy of the record in the above-entitled cause, copies of process against petitioner, and of all pleadings, depositions, testimony, and other proceedings in the cause, and for the payment of all costs which may be awarded, if said circuit court shall hold this cause was wrongfully or improperly removed thereto, and also for their appearing und entering special bail in said suit if special bail was originally requisite therein; and your petitioner hereby offers to furnish such additional security as the honorable court shall require.

Wherefore your petitioner prays this court to accept said petition and bond and that said above-entitled cause may be removed
87 to the circuit court of the United States for the eastern district of Wisconsin, and that all proceedings in said Milwaukee county circuit court may be stayed, and that said court proceed no further in the said action and that your petitioner may have such other further or different relief as it may be entitled to pursuant to the provisions of the acts of Congress in that behalf. And your petitioner will ever pray, &c.

BANK OF KANSAS CITY,
By FINCHES, LYNDE & MILLER,
Its Attorneys.

(Endorsed:) Filed Jan'y 14, '82. J. Wechselberg, clerk.

Bond for Removal.

Know all men by these presents that we, Bank of Kansas City, as principal, and John Johnson, as surety, are held and firmly bound unto August W. Goetz, Jr., & August F. Luening, in the sum of five hundred —, to be paid to the said August W. Goetz, Jr., & August F. Luening, executors, administrators or assigns: to which payment well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

88 Sealed with our seals the tenth day of January, A. D. 1882.

Whereas the above-bounden Bank of Kansas City have petitioned the circuit court of Milwaukee county, State of Wisconsin, for the removal of a cause therein pending wherein August W. Goetz, Jr., and August F. Luening are plaintiffs and the Bank of Kansas City is defendant to the circuit court of the United States for the eastern district of Wisconsin, pursuant to the provisions of the acts of Congress in that behalf:

Now, therefore, the condition of the above obligation is such that if the above-bounden Bank of Kansas City shall enter in such circuit court on the first day of its next session a copy of the record in such suit, copies of the process against petitioner and of all the pleadings, depositions, testimony, and other proceedings in the cause, and shall pay all costs that may be awarded by said circuit court, if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also then and there appear and enter special bail in such suit; if special bail was originally requisite therein, then this obligation shall be null and void; otherwise of force.

[Seal of the Bank of Kansas City.]

89 JOSEPH S. CHICK, *President.* [SEAL.]
JOHN JOHNSON. [SEAL.]

In presence of—
STANLEY HOBBS.
J. H. SLATER.
BENJ. K. MILLER, JR.

STATE OF WISCONSIN, } ss.
Milwaukee County, }

I, John Johnson, of Milwaukee, county of Milwaukee and State of Wisconsin, the surety named in the foregoing bond, do depose & say: That I am a resident of the State of Wisconsin, and a property holder therein; that I am worth the sum of five hundred dollars in property within the State of Wisconsin over and above all my debts and liabilities, and exclusive of property by law exempt from execution.

[Notarial Seal.] JOHN JOHNSON.

Subscribed and sworn to before me, this 14th day of January, A. D. 1882. BENJ. K. MILLER,
Notary Public, Mil. Co., Wis.

(Endorsed:) Filed Jan. 14, '82. J. Wechselberg, clerk.

Order of Removal to U. S. Court.

THE STATE OF WISCONSIN:

Circuit Court, Milwaukee County.

AUGUST W. GOETZ, Jr., & AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

90 Upon filing the petition of the Bank of Kansas City for removal of above-entitled action to the circuit court of the United States for the eastern district of Wisconsin, and the bond thereto attached, showing that all the proceedings for the removal of said above-entitled action into the circuit court of the United States for the eastern district of Wisconsin, pursuant to the statute in such case made and provided, have been taken, and that said suit is one proper for such removal, and on motion of Finches, Lynde & Miller, attorneys for the petitioner—

It is hereby ordered that said suit be, and the same hereby is, removed into the circuit court of the United States for the eastern district of Wisconsin; and the clerk of this court is hereby directed to transmit and deliver to the clerk of the circuit court of the United States for the eastern district of Wisconsin copies of the record and of the process against said petitioner, and of all pleadings, depositions, testimony, and other proceedings in the cause, and that the bond filed is hereby approved, & that all proceedings in this court are hereby stayed.

Dated Milwaukee, January —, A. D. 1882.

91 By the court:

CHARLES A. HAMILTON,
Circuit Judge.

(Endorsed:) Filed Jan. 14, 1882. J. Wechselberg, clerk.

State tax $1
Clerk's tax..... $2

Paid by pl'ffs' att'ys.

Circuit Court, Milwaukee County. October Term, 1881.

A. W. GOETZ, Jr., and AUGUST F. LUENING
against
BANK OF KANSAS CITY.

Money demand.

Cotzhausen, S. & S.

November 16, 1881. And now comes the plaintiffs in the above-entitled action, by Cotzhausen, Sylvester & Scheiber, their attorneys, and file their summons (copy). Same time writ of attachment issued.

Nov 19, 1881. Summons filed, endorsed "Not found." Fees, $1.

Nov. 19, 1881. Affidavit, undertaking, & writ of attachment filed, with appraisal annexed & sheriff's return endorsed thereon.

Nov. 26, 1881. Complaint filed.

Nov. 28, 1881. Notice of appearance by Finches, Lynde & Miller, for defendant, filed.

Dec. 2, 1881. Affidavit & order to show cause filed.

Dec. 5, 1881. Order directing sheriff to sell attached property filed.

Dec. 13, 1881. Complaint filed (refiled).

Jan'y 14, 1882. Petition & bond on removal filed.

92 On motion of Finches, Lynde & Miller, defendant's attorneys, it is ordered that the place of trial of this action be, and the same hereby is, removed into the circuit court of the United States for the eastern district of Wisconsin; and the clerk is hereby directed to transmit and deliver to the clerk of said court the papers & records herein.

Plaintiffs appeared by Cotzhausen, Sylvester & Scheiber, their attorneys.

Order for removal filed.

In Circuit Court for Milwaukee County.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Plaintiffs,
vs.
BANK OF KANSAS CITY, Defendant.

STATE OF WISCONSIN, } *ss:*
County of Milwaukee, }

I, Julius Wechselberg, clerk of the circuit court within and for the county of Milwaukee aforesaid, do hereby certify that the annexed and foregoing paper writings, and each and every one of them, have been by me compared with the originals, respectively, entered in the cause therein entitled; that they are, and each of them respectively is, a true and correct copy of the whole and each
93 part of said originals, respectively, as the same remain of record in my office; and that the said annexed paper writings are copies of the records and of the process, and of all pleadings, depositions, testimony and other proceedings in the cause therein entitled, and that the same are herewith transmitted to the circuit court of the United States for the eastern district of Wisconsin, pursuant to the order in that behalf therein made.

In testimony whereof I have hereunto set my hand and the seal of said circuit court, at Milwaukee, this ninth day of February, A. D. 1882.

[SEAL.] JULIUS WECHSELBERG, *Clerk.*

End of copies certified from State court.

And same day, (July 11, 1882,) came the plaintiffs by their attorneys, and filed their amended complaint, as follows:

Amended Complaint.

Circuit Court, County of Milwaukee.

AUGUST W. GOETZ, Jr., *et al. vs.* BANK OF KANSAS CITY.

94 The amended complaint of the above-named plaintiffs, by Cotzhausen, Sylvester & Scherber, their attorneys, respectfully shows:

First. That the plaintiffs now are, and for a year and more last past have been, copartners in business as commission merchants at the city of Milwaukee, State of Wisconsin, under the firm name of "Goetz & Luening."

That the above-named defendant now is, and for a number of years last past has been, a banking corporation organized and existing under the laws of the State of Missouri, doing business as such at Kansas City, in said State—one E. K. Thornton acting as cashier of said bank.

Second. That in the early part of October, 1881, one Joseph N. Du Bois, also a resident of Kansas City and dealer in hides, proposed to these plaintiffs to consign to them from time to time hides of various kinds and quality to be sold by these plaintiffs for him, said Du Bois, on commission in the Milwaukee market.

That said proposition was accepted by these plaintiffs and that in order to facilitate continuous purchases and shipments of hides for the purpose aforesaid, it was then and there agreed by
95 and between the said Dubois and these plaintiffs that upon making a consignment of hides in due and proper form, and delivery of a corresponding shipping receipt or bill of lading, entitling these plaintiffs to the control and possession of the merchandise so shipped, the plaintiffs would advance to said Joseph N. Dubois, consignor, two thirds of the market price of such shipment at the city of Milwaukee.

Third. That on or about the 13th day of October, 1881, these plaintiffs were informed by letter from said Dubois that under date of October 11, 1881, he had shipped to them a car-load of G. S. hides (invoice of which was enclosed) and that he had drawn on these plaintiffs a sight draft at the rate of 6½ cents per lb. or ⅔ of the market value at Milwaukee, which then was 9¾ cents per lb., and that in a few days he might ship them another car-load, if not able to do better at Kansas City. That on the 14th day of October, 1881, the defendant in this case, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what purported to be a shipping receipt or bill of lading issued
96 by the Chicago and Alton R. R. Co. under date of October 11, 1881, at Kansas City, and reciting among other things that said railroad company had received from J. N. Du Bois 500 green hides of the weight, subject to correction, of 22,000 lbs. to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "To shipper's order. Notify Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or

value bill, purporting upon its face to give the details of net weight at 26,318 lbs. and market price at Milwaukee at 9¾ cents, or in the aggregate $2,566.00, and making reference to a sight draft at ⅔ of the value, viz., for $1,710; and accompanying said papers and attached thereto, so as to form part and parcel of the same transaction, there was also a draft, dated at Kansas City, October 11th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to the order of E. K. Thornton, cashier, seventeen hundred and ten dollars, value received, and charge the same to account of the drawer aforesaid.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan
97 (who they had reason to believe to be Du Bois' book-keeper and correspondent), but that they were not acquainted with the signature of the railroad agent, who purported to have signed and issued the aforesaid shipping receipt, and also were ignorant of the correctness of the accompanying invoice or value bill.

That upon examination of the papers it was ascertained that the so-called shipping receipt was endorsed "J. N. Du Bois, per J. Mac Lellan," and the invoice and accompanying draft were endorsed by said defendant as follows:

"Pay to L. J. Gage, cashier, or order, for collection on acc't of Bank of Kansas City.

"E. K. THORNTON, *Cashier.*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for the defendant, as hereinbefore particularly stated.)

And these plaintiffs further show that, deeming said documents and papers all and singular to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements upon the face and back of said papers, and thereby influenced to desist
98 from further inquiries into the facts, and believing at the time, from all the circumstances of the case, that the bank defendant, by its endorsements of the invoice, meant to certify to and guaranty the correctness of the same, and that by transfer from Du Bois it had become the owner of the merchandise in question, and that on delivery by said defendant of the shipping receipt a good title in law and in fact would vest in them to the property therein described, on the 14th day of October, A. D. 1881, they accepted in perfect good faith, and relying on the aforesaid premises and undertakings, the draft of said Du Bois, and in due course of time, to wit, on the 17th day of October, 1881, the defendant obtained by means of said premises from these plaintiffs the sum of seventeen hundred and ten dollars in cash.

Fourth. That on the 17th day of October, A. D. 1881, the defendant in this case, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what purported to be a shipping receipt or bill of lading, issued by the Chi-

cago & Alton R. R. Co., under date of October 13th, 1881, at Kansas City, and reciting, among other things, that said railroad
99 company had received from J. N. Du Bois 425 bundles green hides, of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Order of shipper—notify Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or value bill, purporting upon its face to give the details of net weight at 24,862 lbs. and aggregate value or market price at $2,527.81, and making reference to sight draft at ⅔ of value, viz., for $1,685; and accompanying said papers and attached thereto so as to form part and parcel of the same transaction there was a draft, dated at Kansas City, October 12th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight, to the order of E. K. Thornton, cashier, sixteen hundred and eighty-five dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the sig-
100 nature and handwriting of said J. N. Du Bois, and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent, who was purported to have signed and issued the aforesaid shipping receipt, and also were ignorant of the correctness of the accompanying invoice or value bill.

That the shipping bill and draft on examination were found to be endorsed, as is hereinbefore particularly set forth as to the draft and bill of lading, dated October 12th, 1881, while the endorsement of the invoice or value bill was omitted.

That deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the preceding transaction, and influenced by said premises to desist from further inquiries into the facts, and believing at the time from the circumstances of the case that in this, as in the previous instance, the defendant had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 17th
101 day of October, 1881, they accepted in perfect good faith, and relying on the aforesaid premises, the draft of said Du Bois, and in due course of time, to wit, on the 21st day of October, 1881, the defendant obtained from these plaintiffs by means of said premises the sum of sixteen hundred and eighty-five dollars in cash.

Fifth. That on the 20th day of October, A. D. 1881, the defendant in this action, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what purported to be a shipping receipt or bill of lading, issued by the Chicago & Alton R. R. Co., under date of October 17th, 1881, at Kansas City, and reciting, among other things, that said railroad company had received from J. N. Du Bois 450 green hides, of the weight, subject

to correction, of 23,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Order. Notify Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or value bill purporting upon its face to give the details
102 of net weight at 29,555 lbs., and aggregate value or market price at $3,066.01, and making reference to sight draft for $2,000.00, and accompanying said papers, and attached thereto, so as to form part and parcel of the same transaction, there was a draft, dated at Kansas City Oct. 17th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to the order of E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent who was purported to have signed and issued the shipping receipt, and also were ignorant of the correctness of the accompanying invoice or value bill; that the said shipping receipt was endorsed as follows: "J. N. Du Bois, p. J. Mac Lellan," and that said draft accompany-
103 ing said bill of lading and invoice and annexed thereto as aforesaid was endorsed as follows:

"Pay L. J. Gage, cashier, or order, for collection on acc't of Bank of Kansas City.

"E. K. THORNTON, *Cashier*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for the defendant, as hereinbefore particularly stated.)

And these plaintiffs further show that, deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the two preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time, from the circumstances of the case, that in this as in the previous instances the defendant had become the owner, by transfer from said Du Bois, of the merchandise in question, and that on delivery of the shipping receipt by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 20th day of October, 1881, they, relying on the aforesaid premises and in perfect good faith, ac-
104 cepted said draft of said Du Bois, and in due course of time, to wit, on the 24th day of October, 1881, the defendant obtained from these plaintiffs, by means of said premises, the sum of two thousand dollars in cash.

Sixth. That on the 22d day of October, A. D. 1881, the defendant in this action, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what pur-

ported to be a shipping receipt or bill of lading, issued by the Chicago and Alton R. R. Co., under date of October 19th, 1881, at Kansas City, and reciting among other things that said railroad company had received from J. N. Du Bois 450 G. S. hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or value bill, purporting upon its face to give the details of net weight at 28,954 lbs., and aggregate value or market price at $3,037.07, and making reference to sight draft for $2,000.00, and accompany-
105 ing said papers and attached thereto, so as to form part and parcel of the same transaction, there was a draft, dated at Kansas City, Oct. 19th, 1881, drawn by J. N. Du Bois per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to the order of E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his bookkeeper and correspondent, as aforesaid, but that they were not acquainted with the signature of the railroad agent by whom said shipping receipt purported to have been signed and issued, and also were ignorant of the correctness of the accompanying invoice or value bill.

That said shipping receipt or bill of lading was endorsed as follows: "J. N. Du Bois, p. J. Mac Lellan," and that said shipping receipt and said invoice or value bill, and said draft attached to them, severally were and each and every of them was also endorsed as follows:

106 "Pay L. G. Gage, cashier, or order for collection on acct of Bank of Kansas City.

"E. K. THORNTON, *Cashier.*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for defendant, as hereinbefore particularly stated.)

And those plaintiffs further show that, deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the said several preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time from the circumstances of the case that in this as in the said several previous instances the defendant had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 22d day of October, 1881, they, in perfect good faith, and relying on the aforesaid premises, accepted

the said draft of said Du Bois, and in due course of time,
107 to wit, on the 21st day of October, 1881, the defendant obtained from these plaintiffs by means of said premises the sum of two thousand dollars in cash.

Seventh. These plaintiffs further show that on the 28th day of October, 1881, the defendant in this case, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what purported to be a shipping receipt or bill of lading, issued by the Chicago & Alton R. R. Co., under date of October 24th, 1881, at Kansas City, and reciting, among other things, that said railroad company had received from J. N. Du Bois upwards of 450 hides, (the precise number of them is not now remembered by these plaintiffs,) of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from said Kansas City to Milwaukee, to be delivered to the consignee or owner at Milwaukee, and consigned either to these plaintiffs or to the order of said Du Bois, with a direction to notify these plaintiffs. (The precise marking and mode of consignment written in said document is not now rembered by these plaintiffs.)

108 That annexed to the aforesaid document there was an invoice or value bill, so called, purporting upon its face to give the details of net weight and aggregate value or market price of such supposed hides, the particulars of which are not now remembered by these plaintiffs, and making reference to a sight draft for $2,000.00, and accompanying said papers, and attached thereto so as to form part and parcel of the same transaction, there was a draft, dated at Kansas City October 24th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent by whom the
109 aforesaid shipping receipt purported to have been signed and issued, and were ignorant of the correctness of the accompanying invoice or value bill.

That on examination said draft was found endorsed substantially as were the other drafts above mentioned, and said shipping receipt or bill of lading was found endorsed: J. N. Du Bois, per J. Mac Lellan, while no endorsement (to the best of plaintiffs' recollection) was found on said invoice or value bill.

That deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and said several preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time from the circumstances of the case that in this as in said previous instances the defendant had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt

by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 28th day of October, 1881, they, in perfect good faith, and relying on the
110 aforesaid premises, accepted the said draft of said Du Bois of October 24th, 1881; but that afterwards they were informed of facts and circumstances hereinafter more fully set forth, by which they were led to believe that said supposed bill of lading or shipping receipt of October 24th was a forgery, and that said bank defendant had not acted in good faith in obtaining said various acceptances, and, therefore, when said papers and documents were presented to them for payment they refused, and have since refused, to honor said acceptance.

Eighth. That towards the end of the month of October these plaintiffs became somewhat uneasy because the arrival of these shipments at the point of destination was unduly delayed and not even the first cargo called for by said shipping receipts had come to their hands; that, for a time, all suspicion on part of these plaintiffs was abated by the repeated statements of Du Bois that in consequence of high water in the Mississippi and tributaries freight on all lines west had been intercepted and blocked. That towards the 31st day of October, 1881, and just prior to the maturity of the accepted
111 draft referred to in the seventh paragraph of this complaint, information came to these plaintiffs that the various shipping receipts above alluded to, all and singular, were forgeries, and that no such shipments, in point of fact, were ever made, which information, upon further inquiry, proved to be correct, and these plaintiffs now charge the fact accordingly.

Ninth. The plaintiffs further show that, owing to the great distance between their place of business and Kansas City, they had no knowledge of the moral or financial standing of said J. N. Du Bois, and never prior to the transactions herein alluded to had they any business dealings with him in hides or other commodities; that, as these plaintiffs have, of late, been informed, said Du Bois for several years past was in very bad repute in business circles at his home and place of business; that repeatedly of late years he had been caught and detected in various crooked business transactions, and among others in issuing, under circumstances very similar to those disclosed here, forged bills of lading and shipping receipts, on
112 the strength of which he had raised money through banks and by means of drafts drawn by him upon parties residing abroad, and that such evil practices had become a matter of notoriety at Kansas City.

That long prior to the occurrences hereinafter stated the officers of said bank were well acquainted with said Du Bois, and had full knowledge of his crookedness and evil disposition; that the repeated previous forgeries of shipping receipts and other papers on part of said Du Bois, although unknown to these plaintiffs, were brought at the time to the notice of said defendant and its officers; that said bank was also informed, prior to the drawing of the drafts before mentioned, of the arrangement and agreement between these plaintiffs and said Du Bois relating to the shipment of hides in manner

aforesaid, and well knew that the various drafts, bills of lading, and invoices were part and parcel of the same transaction, and that said Du Bois had no credits to his account with these plaintiffs upon which to draw, and that neither of the said drafts would be accepted or paid unless the drawees were made to believe, and actually
113 did believe, that the shipping receipts represented in fact and in law the title and actual ownership to certain property therein referred to.

Tenth. And these plaintiffs further show that it is now claimed and asserted by said defendant that the bank discounted and purchased in the ordinary course of business the drafts and bills of lading thereto attached, and that prior to the acceptance and maturity of said papers it became in good faith the owner thereof; but, on the contrary, these plaintiffs allege that said banking defendant was not at the various times of transfer a purchaser in good faith; that it did not, in point of fact, purchase in the ordinary course of business and for value; that the greater part of the moneys received from these plaintiffs was applied on a pre-existing indebtedness from Du Bois to the bank; that the defendant bank allowed itself to be made a party to a fraudulent scheme on part of said Du Bois, and gave color and credence to the papers and documents referred to by allowing their name to be used in connection therewith, to the great injury of these plaintiffs, who acted in perfect good faith, and with due
114 care and diligence, whereas but slight inquiry would have revealed to said bank the fact that said bills of lading were forged; that the said defendant had every reason to believe that its endorsement upon the bills of lading or the invoice bills would be taken and considered by these plaintiffs as a guaranty of their absolute correctness, and that the party so endorsing or certifying was personally cognizant of the facts stated in said documents; and that, as already before stated, these plaintiffs actually did so believe, and were misled thereby and desisted in consequence thereof from further inquiries in that behalf; that, on presenting said several drafts for acceptance and payment, together with the shipping receipts and invoice bills thereto attached, the defendant represented itself to be the owner of the property called for by said shipping receipts, and particularly described as to quality, net weight, and value in the invoice bills, which were annexed, and that it was willing and ready to transfer the said property upon acceptance and payment of the corresponding drafts; and that, relying upon such representation and guaranty of title, these
115 plaintiffs were induced in good faith to advance and pay to them said various sums of money, whereas in truth and in fact said evidences of ownership were forged, and no property whatever at any time came to the possession of these plaintiffs by means thereof; and that, as these plaintiffs verily believe, said defendant actually connived and colluded with said J. N. Du Bois for the purpose of obtaining such moneys in manner and form above set forth; and in this behalf the plaintiffs further allege that when they re-

ceived notice of the forgery of these shipping bills they promptly communicated the fact to the defendant in this cause—

Struck out by order of court made August 7th, 1882.

[and requested steps to be taken to apprehend said Du Bois and bring him to justice, but the defendant, in gross disregard of the interests of these plaintiffs and the public at large, refrained from all proceedings in that behalf, and allowed said Du Bois to abscond from the country.]

Eleventh. That by reason of said premises the defendant is now justly and truly indebted to these plaintiffs for money had and received as follows, to wit:

October	17, 1881.	To cash	$1,710
"	21, 1881.	To cash	1,685
116			
"	24, "	To cash	2,000
"	26, "	To cash	2,000
			$7,395 00

Amounting in the aggregate to seven thousand three hundred and ninety-five dollars, together with interest at seven per cent. per annum from the date above stated.

Wherefore these plaintiffs demand judgment against the defendant for the sum above mentioned, with interest and costs.

COTZHAUSEN, SYLVESTER & SCHEIBER,
Plaintiffs' Attorneys.
JENKINS, ELLIOTT & WINKLER,
Of Counsel.

MILWAUKEE COUNTY, *ss:*

August W. Goetz, Jr., being duly sworn, says: That he is one of the plaintiffs in the above action, and makes this verification for himself and for his coplaintiff, who is united in interest with him in said action; that the foregoing complaint is true to his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

A. W. GOETZ, JR.

Subscribed & sworn to before me, this 27 day of December, 1881.
GEORGE SYLVESTER,
Notary Public, Mil. Co., Wis.

117 *Motion of Defendant to Strike Out Parts of Amended Complaint.*

Circuit Court of the United States, Eastern District of Wisconsin.

AUGUST W. GOETZ, JR., *et al.*, Pl'ffs,
against
BANK OF KANSAS CITY, Def't.

And now comes the said defendants by Finches, Lynde & Miller,

its attorneys, and moves the court, on the amended complaint herein now on file in the above-entitled cause, for an order striking out the following words, sentences, and allegations of said amended complaint as irrelevant and redundant, for the reason that said words, sentences, and allegations consist of matters which are irrelevant and redundant.

1st. The words, sentences, and allegations of said amended complaint commencing in folio 32 and ending in folio 33 as follows, to wit:

"That towards the end of the month of October these plaintiffs became somewhat uneasy, because the arrival of these shipments at the point of destination was unduly delayed, and not even the first cargo called for by said shipping receipts had come to their
118 hands; but that for a time all suspicions on part of these plaintiffs were abated by the repeated statements of Du Bois; that in consequence of high water in the Mississippi and tributaries freight on all lines west had been intercepted and blocked."

2nd. The words, sentences, and allegations of said amended complaint commencing in folio 33 and ending in folio 35, as follows, to wit:

"These plaintiffs further show that owing to the great distance between their place of business and Kansas City they had no knowledge of the moral or financial standing of said J. N. Du Bois, and never, prior to the transactions herein alluded to, had they any business dealings with him in hides or other commodities; that, as these plaintiffs have of late been informed, said Du Bois for several years past was in very bad repute in business circles at his home and place of business; that repeatedly of late years he had been caught and detected in various crooked business transactions, and, among others, in issuing, under circumstances very similar to those disclosed here, forged bills of lading and shipping receipts, on the
119 strength of which he had raised money through banks and by means of drafts drawn by him upon parties residing abroad, and that such evil practices had become a matter of notoriety at Kansas City."

3rd. The words, sentences, and allegations of said amended complaint commencing in folio 35 and ending in folio 36, as follows, to wit:

"That prior to the occur-ences hereinbefore stated the officers of said bank were well acquainted with said Du Bois, and had full knowledge of his crookedness and evil disposition; that the repeated previous forgeries of shipping receipts and other papers on part of said Du Bois, although unknown to these plaintiffs, were brought at the time to the notice of said defendant and its officers."

4th. The words, sentences, and allegations of said amended complaint contained in folio 39, as follows, to wit:

* * * "Who acted in perfect good faith and with due care and diligence."

5th. The words, sentences, and allegations of said amended complaint contained in folio 39, as follows, to wit:

120 * * * "Whereas but slight inquiry would have revealed to said banks the fact that said bills of lading were forged."

6th. The words, sentences, and allegations of said annexed complaint, commencing in folio 39 and ending in folio 40, as follows, to wit:

"That the said defendant had every reason to believe that its endorsement upon the bills of lading or the invoice bills would be taken and considered by these plaintiffs as a guaranty of their absolute correctness, and that the party so endorsing or certifying was personally cognizant of the facts stated in said documents, and that, as already before stated, these plaintiffs actually did so believe, and were misled thereby, and desisted in consequence thereof from further inquiries in that behalf."

7th. The words, sentences, and allegations of said amended complaint, commencing in folio 42 and ending in folio 43, as follows, to wit:

"And in this behalf the plaintiffs further allege that, when they received notice of the forgery of these shipping bills, they promptly communicated the fact to the defendant in this case, and re-

121 quested steps to be taken to apprehend said Du Bois, and bring him to justice, but the defendant, in gross disregard of the interests of these plaintiffs and the public at large, refrained from all proceedings in that behalf, and allowed said Du Bois to abscond from the country."

And for the costs of this motion.

FINCHES, LYNDE & MILLER,
Pff's Att'ys.

Circuit Court of the United States, Eastern District of Wisconsin.

AUGUST W. GOETZ, Jr., *et al.*, Pff's,
against
BANK OF KANSAS CITY, Def't.

On the motion hereto annexed, and on motion of Finches, Lynde & Miller, attorneys for the defendant, it is ordered that the said plaintiffs show cause before me, on the 1st day of August, A. D. 1882, at the opening of court on that day, or as soon thereafter as counsel can be heard, at the U. S. court-room, in the city of Milwaukee, Wisconsin, why the annexed motion should not be granted, or why the defendant should not have such other, further, or different relief as the court may grant in the premises.

122 It is further ordered that, in the meantime, and until the hearing and determination of this motion, all proceedings on the part of the plaintiffs in the above-entitled cause, be, and are hereby, stayed.

It is further ordered that a copy of this order be served upon the attorneys of the plaintiffs on or before the 28th day of July, 1882.

Dated July 25, 1882.

CHAS. E. DYER, *Judge.*

to correction, of 23,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Order. Notify Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or value bill purporting upon its face to give the details
102 of net weight at 29,555 lbs., and aggregate value or market price at $3,066.01, and making reference to sight draft for $2,000.00, and accompanying said papers, and attached thereto, so as to form part and parcel of the same transaction, there was a draft, dated at Kansas City Oct. 17th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to the order of E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent who was purported to have signed and issued the shipping receipt, and also were ignorant of the correctness of the accompanying invoice or value bill; that the said shipping receipt was endorsed as follows: "J. N. Du Bois, p. J. Mac Lellan," and that said draft accompany-
103 ing said bill of lading and invoice and annexed thereto as aforesaid was endorsed as follows:

"Pay L. J. Gage, cashier, or order, for collection on acc't of Bank of Kansas City.

"E. K. THORNTON, *Cashier*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for the defendant, as hereinbefore particularly stated.)

And these plaintiffs further show that, deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the two preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time, from the circumstances of the case, that in this as in the previous instances the defendant had become the owner, by transfer from said Du Bois, of the merchandise in question, and that on delivery of the shipping receipt by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 20th day of October, 1881, they, relying on the aforesaid premises and in perfect good faith, ac-
104 cepted said draft of said Du Bois, and in due course of time, to wit, on the 24th day of October, 1881, the defendant obtained from these plaintiffs, by means of said premises, the sum of two thousand dollars in cash.

Sixth. That on the 22d day of October, A. D. 1881, the defendant in this action, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what pur-

ported to be a shipping receipt or bill of lading, issued by the Chicago and Alton R. R. Co., under date of October 19th, 1881, at Kansas City, and reciting among other things that said railroad company had received from J. N. Du Bois 450 G. S. hides of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "Goetz & Luening, Milwaukee, Wis."

That annexed to the aforesaid document there was an invoice or value bill, purporting upon its face to give the details of net weight at 28,954 lbs., and aggregate value or market price at $3,037.07, and making reference to sight draft for $2,000.00, and accompany-

105 ing said papers and attached thereto, so as to form part and parcel of the same transaction, there was a draft, dated at Kansas City, Oct. 19th, 1881, drawn by J. N. Du Bois per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to the order of E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his bookkeeper and correspondent, as aforesaid, but that they were not acquainted with the signature of the railroad agent by whom said shipping receipt purported to have been signed and issued, and also were ignorant of the correctness of the accompanying invoice or value bill.

That said shipping receipt or bill of lading was endorsed as follows: "J. N. Du Bois, p. J. Mac Lellan," and that said shipping receipt and said invoice or value bill, and said draft attached to them, severally were and each and every of them was also endorsed as follows:

106 "Pay L. G. Gage, cashier, or order for collection on acct of Bank of Kansas City.

"E. K. THORNTON, *Cashier.*"

(Said Gage, cashier, being then an officer of the First National Bank of Chicago, acting as an agent and correspondent merely for defendant, as hereinbefore particularly stated.)

And those plaintiffs further show that, deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and the said several preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time from the circumstances of the case that in this as in the said several previous instances the defendant had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 22d day of October, 1881, they, in perfect good faith, and relying on the aforesaid premises, accepted

the said draft of said Du Bois, and in due course of time,
107 to wit, on the 21st day of October, 1881, the defendant obtained from these plaintiffs by means of said premises the sum of two thousand dollars in cash.

Seventh. These plaintiffs further show that on the 28th day of October, 1881, the defendant in this case, through its agents and correspondents at Chicago and Milwaukee, caused to be presented to these plaintiffs what purported to be a shipping receipt or bill of lading, issued by the Chicago & Alton R. R. Co., under date of October 24th, 1881, at Kansas City, and reciting, among other things, that said railroad company had received from J. N. Du Bois upwards of 450 hides, (the precise number of them is not now remembered by these plaintiffs,) of the weight, subject to correction, of 22,000 lbs., to be transported on the line of said railroad from said Kansas City to Milwaukee, to be delivered to the consignee or owner at Milwaukee, and consigned either to these plaintiffs or to the order of said Du Bois, with a direction to notify these plaintiffs. (The precise marking and mode of consignment written in said document is not now rembered by these plaintiffs.)

108 That annexed to the aforesaid document there was an invoice or value bill, so called, purporting upon its face to give the details of net weight and aggregate value or market price of such supposed hides, the particulars of which are not now remembered by these plaintiffs, and making reference to a sight draft for $2,000.00, and accompanying said papers, and attached thereto so as to form part and parcel of the same transaction, there was a draft, dated at Kansas City October 24th, 1881, drawn by J. N. Du Bois, per J. Mac Lellan, upon these plaintiffs, whereby these plaintiffs were requested to pay at sight to E. K. Thornton, cashier, two thousand dollars, value received, and charge the same to account of the aforesaid drawer.

That these plaintiffs at the time were familiar with the signature and handwriting of said J. N. Du Bois and of J. Mac Lellan, his book-keeper and correspondent as aforesaid, but that they were not acquainted with the signature of the railroad agent by whom the aforesaid shipping receipt purported to have been signed and
109 issued, and were ignorant of the correctness of the accompanying invoice or value bill.

That on examination said draft was found endorsed substantially as were the other drafts above mentioned, and said shipping receipt or bill of lading was found endorsed: J. N. Du Bois, per J. Mac Lellan, while no endorsement (to the best of plaintiffs' recollection) was found on said invoice or value bill.

That deeming said documents and papers, all and singular, to be genuine and correct, misled by the aforesaid acts, writings, certificates, and endorsements relating to this and said several preceding transactions, and influenced by said premises to desist from further inquiries into the facts, and believing at the time from the circumstances of the case that in this as in said previous instances the defendant had become the owner by transfer from Du Bois of the merchandise in question, and that on delivery of the shipping receipt

by said defendant they, these plaintiffs, would become the owners in law and in fact of the property therein described, on the 28th day of October, 1881, they, in perfect good faith, and relying on the
110 aforesaid premises, accepted the said draft of said Du Bois of October 24th, 1881; but that afterwards they were informed of facts and circumstances hereinafter more fully set forth, by which they were led to believe that said supposed bill of lading or shipping receipt of October 24th was a forgery, and that said bank defendant had not acted in good faith in obtaining said various acceptances, and, therefore, when said papers and documents were presented to them for payment they refused, and have since refused, to honor said acceptance.

Eighth. That towards the end of the month of October these plaintiffs became somewhat uneasy because the arrival of these shipments at the point of destination was unduly delayed and not even the first cargo called for by said shipping receipts had come to their hands; that, for a time, all suspicion on part of these plaintiffs was abated by the repeated statements of Du Bois that in consequence of high water in the Mississippi and tributaries freight on all lines west had been intercepted and blocked. That towards the 31st day of October, 1881, and just prior to the maturity of the accepted
111 draft referred to in the seventh paragraph of this complaint, information came to these plaintiffs that the various shipping receipts above alluded to, all and singular, were forgeries, and that no such shipments, in point of fact, were ever made, which information, upon further inquiry, proved to be correct, and these plaintiffs now charge the fact accordingly.

Ninth. The plaintiffs further show that, owing to the great distance between their place of business and Kansas City, they had no knowledge of the moral or financial standing of said J. N. Du Bois, and never prior to the transactions herein alluded to had they any business dealings with him in hides or other commodities; that, as these plaintiffs have, of late, been informed, said Du Bois for several years past was in very bad repute in business circles at his home and place of business; that repeatedly of late years he had been caught and detected in various crooked business transactions, and among others in issuing, under circumstances very similar to those disclosed here, forged bills of lading and shipping receipts, on
112 the strength of which he had raised money through banks and by means of drafts drawn by him upon parties residing abroad, and that such evil practices had become a matter of notoriety at Kansas City.

That long prior to the occurrences hereinafter stated the officers of said bank were well acquainted with said Du Bois, and had full knowledge of his crookedness and evil disposition; that the repeated previous forgeries of shipping receipts and other papers on part of said Du Bois, although unknown to these plaintiffs, were brought at the time to the notice of said defendant and its officers; that said bank was also informed, prior to the drawing of the drafts before mentioned, of the arrangement and agreement between these plaintiffs and said Du Bois relating to the shipment of hides in manner

aforesaid, and well knew that the various drafts, bills of lading, and invoices were part and parcel of the same transaction, and that said Du Bois had no credits to his account with these plaintiffs upon which to draw, and that neither of the said drafts would be accepted or paid unless the drawees were made to believe, and actually
113 did believe, that the shipping receipts represented in fact and in law the title and actual ownership to certain property therein referred to.

Tenth. And these plaintiffs further show that it is now claimed and asserted by said defendant that the bank discounted and purchased in the ordinary course of business the drafts and bills of lading thereto attached, and that prior to the acceptance and maturity of said papers it became in good faith the owner thereof; but, on the contrary, these plaintiffs allege that said banking defendant was not at the various times of transfer a purchaser in good faith; that it did not, in point of fact, purchase in the ordinary course of business and for value; that the greater part of the moneys received from these plaintiffs was applied on a pre-existing indebtedness from Du Bois to the bank; that the defendant bank allowed itself to be made a party to a fraudulent scheme on part of said Du Bois, and gave color and credence to the papers and documents referred to by allowing their name to be used in connection therewith, to the great injury of these plaintiffs, who acted in perfect good faith, and with due
114 care and diligence, whereas but slight inquiry would have revealed to said bank the fact that said bills of lading were forged; that the said defendant had every reason to believe that its endorsement upon the bills of lading or the invoice bills would be taken and considered by these plaintiffs as a guaranty of their absolute correctness, and that the party so endorsing or certifying was personally cognizant of the facts stated in said documents; and that, as already before stated, these plaintiffs actually did so believe, and were misled thereby and desisted in consequence thereof from further inquiries in that behalf; that, on presenting said several drafts for acceptance and payment, together with the shipping receipts and invoice bills thereto attached, the defendant represented itself to be the owner of the property called for by said shipping receipts, and particularly described as to quality, net weight, and value in the invoice bills, which were annexed, and that it was willing and ready to transfer the said property upon acceptance and payment of the corresponding drafts; and that, relying upon such representation and guaranty of title, these
115 plaintiffs were induced in good faith to advance and pay to them said various sums of money, whereas in truth and in fact said evidences of ownership were forged, and no property whatever at any time came to the possession of these plaintiffs by means thereof; and that, as these plaintiffs verily believe, said defendant actually connived and colluded with said J. N. Du Bois for the purpose of obtaining such moneys in manner and form above set forth; and in this behalf the plaintiffs further allege that when they re-

ceived notice of the forgery of these shipping bills they promptly communicated the fact to the defendant in this cause—

Struck out by order of court made August 7th, 1882.

[and requested steps to be taken to apprehend said Du Bois and bring him to justice, but the defendant, in gross disregard of the interests of these plaintiffs and the public at large, refrained from all proceedings in that behalf, and allowed said Du Bois to abscond from the country.]

Eleventh. That by reason of said premises the defendant is now justly and truly indebted to these plaintiffs for money had and received as follows, to wit:

October	17, 1881.	To cash	$1,710
"	21, 1881.	To cash	1,685
116			
"	24, "	To cash	2,000
"	26, "	To cash	2,000
			$7,395 00

Amounting in the aggregate to seven thousand three hundred and ninety-five dollars, together with interest at seven per cent. per annum from the date above stated.

Wherefore these plaintiffs demand judgment against the defendant for the sum above mentioned, with interest and costs.

COTZHAUSEN, SYLVESTER & SCHEIBER,
Plaintiffs' Attorneys.
JENKINS, ELLIOTT & WINKLER,
Of Counsel.

MILWAUKEE COUNTY, *ss:*

August W. Goetz, Jr., being duly sworn, says: That he is one of the plaintiffs in the above action, and makes this verification for himself and for his coplaintiff, who is united in interest with him in said action; that the foregoing complaint is true to his own knowledge, except the matters therein stated on information and belief, and as to those matters he believes it to be true.

A. W. GOETZ, JR.

Subscribed & sworn to before me, this 27 day of December, 1881.
GEORGE SYLVESTER,
Notary Public, Mil. Co., Wis.

117 *Motion of Defendant to Strike Out Parts of Amended Complaint.*

Circuit Court of the United States, Eastern District of Wisconsin.

AUGUST W. GOETZ, JR., *et al.*, Pl'ffs,
against
BANK OF KANSAS CITY, Def't.

And now comes the said defendants by Finches, Lynde & Miller,

its attorneys, and moves the court, on the amended complaint herein now on file in the above-entitled cause, for an order striking out the following words, sentences, and allegations of said amended complaint as irrelevant and redundant, for the reason that said words, sentences, and allegations consist of matters which are irrelevant and redundant.

1st. The words, sentences, and allegations of said amended complaint commencing in folio 32 and ending in folio 33 as follows, to wit:

"That towards the end of the month of October these plaintiffs became somewhat uneasy, because the arrival of these shipments at the point of destination was unduly delayed, and not even the first cargo called for by said shipping receipts had come to their
118 hands; but that for a time all suspicions on part of these plaintiffs were abated by the repeated statements of Du Bois; that in consequence of high water in the Mississippi and tributaries freight on all lines west had been intercepted and blocked."

2nd. The words, sentences, and allegations of said amended complaint commencing in folio 33 and ending in folio 35, as follows, to wit:

"These plaintiffs further show that owing to the great distance between their place of business and Kansas City they had no knowledge of the moral or financial standing of said J. N. Du Bois, and never, prior to the transactions herein alluded to, had they any business dealings with him in hides or other commodities; that, as these plaintiffs have of late been informed, said Du Bois for several years past was in very bad repute in business circles at his home and place of business; that repeatedly of late years he had been caught and detected in various crooked business transactions, and, among others, in issuing, under circumstances very similar to those disclosed here, forged bills of lading and shipping receipts, on the
119 strength of which he had raised money through banks and by means of drafts drawn by him upon parties residing abroad, and that such evil practices had become a matter of notoriety at Kansas City."

3rd. The words, sentences, and allegations of said amended complaint commencing in folio 35 and ending in folio 36, as follows, to wit:

"That prior to the occur-ences hereinbefore stated the officers of said bank were well acquainted with said Du Bois, and had full knowledge of his crookedness and evil disposition; that the repeated previous forgeries of shipping receipts and other papers on part of said Du Bois, although unknown to these plaintiffs, were brought at the time to the notice of said defendant and its officers."

4th. The words, sentences, and allegations of said amended complaint contained in folio 39, as follows, to wit:

* * * "Who acted in perfect good faith and with due care and diligence."

5th. The words, sentences, and allegations of said amended complaint contained in folio 39, as follows, to wit:

120 * * * "Whereas but slight inquiry would have revealed to said banks the fact that said bills of lading were forged."

6th. The words, sentences, and allegations of said annexed complaint, commencing in folio 39 and ending in folio 40, as follows, to wit:

"That the said defendant had every reason to believe that its endorsement upon the bills of lading or the invoice bills would be taken and considered by these plaintiffs as a guaranty of their absolute correctness, and that the party so endorsing or certifying was personally cognizant of the facts stated in said documents, and that, as already before stated, these plaintiffs actually did so believe, and were misled thereby, and desisted in consequence thereof from further inquiries in that behalf."

7th. The words, sentences, and allegations of said amended complaint, commencing in folio 42 and ending in folio 43, as follows, to wit:

"And in this behalf the plaintiffs further allege that, when they received notice of the forgery of these shipping bills, they promptly communicated the fact to the defendant in this case, and re-

121 quested steps to be taken to apprehend said Du Bois, and bring him to justice, but the defendant, in gross disregard of the interests of these plaintiffs and the public at large, refrained from all proceedings in that behalf, and allowed said Du Bois to abscond from the country."

And for the costs of this motion.

FINCHES, LYNDE & MILLER,
Pff's Att'ys.

Circuit Court of the United States, Eastern District of Wisconsin.

AUGUST W. GOETZ, JR., *et al.*, Pff's,
against
BANK OF KANSAS CITY, Def't.

On the motion hereto annexed, and on motion of Finches, Lynde & Miller, attorneys for the defendant, it is ordered that the said plaintiffs show cause before me, on the 1st day of August, A. D. 1882, at the opening of court on that day, or as soon thereafter as counsel can be heard, at the U. S. court-room, in the city of Milwaukee, Wisconsin, why the annexed motion should not be granted, or why the defendant should not have such other, further, or different relief as the court may grant in the premises.

122 It is further ordered that, in the meantime, and until the hearing and determination of this motion, all proceedings on the part of the plaintiffs in the above-entitled cause, be, and are hereby, stayed.

It is further ordered that a copy of this order be served upon the attorneys of the plaintiffs on or before the 28th day of July, 1882.

Dated July 25, 1882.

CHAS. E. DYER, *Judge.*

Order Striking out a Certain Allegation in Amended Complaint.

August 7, 1882. This day came the parties by their counsel, and the motion of the defendant to strike out certain portions of the amended complaint in this cause having been argued by the counsel of the parties and submitted, on consideration thereof, it is ordered by the court that said motion be, and hereby is, overruled, except as to the allegation "and requested steps to be taken to apprehend said Du Bois and bring him to justice; but the defendant, in gross disregard of the interests of these plaintiffs and the public at large, refrained from all proceedings in that behalf, and allowed said
123 Du Bois to abscond from the country," in folio 43 of said amended complaint, and as to this allegation said motion is granted, to which rulings counsel on both sides duly excepted. And it is further ordered, that the defendant have twenty-five days from this date to answer the complaint so amended.

Order of Consoldation With Other Case.

And, on motion of the plaintiffs by their counsel, Mr. Cotzhausen, it is ordered by the court that this cause and the cause between these same parties, wherein the defendant in this cause is plaintiff, and the plaintiffs in this cause are defendants, entered as No. 87 of this docket, be, and hereby are, consolidated. And it is further ordered that the taking of depositions on behalf of the Bank of Kansas City be postponed until the 20th day of September, next.

September 1, 1882. This day came the defendant, Bank of Kansas City, by its attorneys, and filed its answer to the amended complaint, as follows:

124 *Answer to Amended Complaint.*

Circuit Court of the United States, Eastern District of Wisconsin.

August W. Goetz, Jr., and August F. Luening, Plaintiffs,
against
Bank of Kansas City, Defendant.

The above-named defendant, by Finches, Lynde & Miller, attorneys, answering plaintiffs' amended complaint, alleges that it has no knowledge or information sufficient to form a belief as to the agreement of plaintiffs with said Du Bois set out in the complaint herein.

Said defendant admits that on or about the 11th day of October, 1881, said Du Bois, at Kansas City, Missouri, made his certain draft or bill of exchange in writing, dated on that day, whereby he requested the plaintiffs herein, at sight, to pay to the order of E. K. Thornton, cashier of said defendant, the sum of $1,710.00, and to charge the same to account of said Du Bois.

Said defendant further alleges that at or about the same time, to wit, on said 11th day of October, 1881, the said Du Bois annexed to said billl of exchange a bill of lading purporting to have been
125 made and issued by the Chicago & Alton Railroad Company, a common carrier doing business at said Kansas City, Mo.,

and reciting, among other things, that said railroad company had received from said Du Bois, on said 11th day of October, 1881, 500 steer hides of the weight, subject to correction, 22,000 pounds, to be transported from Kansas City to Milwaukee, and to be delivered to consignee or owner at Milwaukee, and consigned "to the shipper's order—notify Goetz & Luening, Milwaukee, Wis.;" and that said Du Bois then and there also annexed to said bill of exchange an invoice or value bill, so called, in writing, made by said Du Bois, and reciting and representing that he had shipped, on said 11th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., "consigned to shipper's order—notify Goetz & Luenning, Milwaukee, Wis.," 500 steer hides, of the net weight of 26,318 pounds, valued at 9 & ¾ cents per pound, amounting to the sum of $2,566.00, and that the sight draft for $1,710 had been made on the plaintiffs; that thereupon on said 11th day of October, 1881, at said
126 Kansas City, said Du Bois duly endorsed the said bill of lading in blank and discounted with and transferred to said defendant bank the said bill of exchange and deposited with said defendant said bill of lading and said invoice or value bill annexed as collateral security for the payment of said draft.

Said defendant further alleges that it discounted said bill of exchange for said Du Bois before maturity in good faith, for value, and without notice of any defect or infirmity of said bill of lading, and in the full belief that said bill of lading was genuine, and without any knowledge to the contrary thereof.

Said defendant denies that it discounted said draft or took said security in bad faith, or with knowledge or reason to believe that said bill of lading was a forgery, or that it was not issued by said railroad company or by its authority.

Said defendant denies that it at any time had any knowledge or reason to believe that said Du Bois had not delivered to said railroad company any hides for shipment.

Said defendant denies that it had any knowledge or reason
127 to believe that said value bill was fraudulently made or annexed to said bill of lading and said draft by said Du Bois.

Said defendant denies that it had any knowledge or reason to believe that any of the recitals contained in said bill of lading and said value bill were in whole or part false or untrue.

Said defendant has no knowledge or information sufficient to form a belief as to whether plaintiffs were familiar with the signature or handwriting of said Du Bois, J. Mac Lelland, or the railroad agent who purported to have signed and issued said bill of lading above mentioned.

Said defendant admits that E. K. Thornton was at the times mentioned, and still is, its cashier.

Said defendant denies that it guaranteed or intended to guarantee the correctness of the said bill of lading or value bill, and alleges that it took the same merely as collateral security and in the ordinary course of business.

Said defendant admits that plaintiffs accepted and paid said

128 draft, but denies that it, said defendant, has in any way whatever injured or damaged said plaintiffs.

Said defendant alleges that it has no knowledge or information sufficient to form a belief as to the agreement of plaintiffs with said Du Bois set out in the complaint herein.

Said defendant admits that on or about the 12th day of October, 1881, said Du Bois, at Kansas City, Missouri, made his certain draft or bill of exchange in writing, dated on that day, whereby he requested the plaintiffs herein at sight to pay to the order of E. K. Thornton, cashier of said defendant, the sum of $1,685.00, and to charge the same to account of said Du Bois.

Said defendant further alleges that at or about the same time, to wit, on the 13th day of October, 1881, the said Du Bois annexed to said bill of exchange a bill of lading, purporting to have been made and issued by the Chicago & Alton Railroad Company, a common carrier doing business at Kansas City, Mo., and reciting, among other things, that said railroad company had received from said Du Bois, on said 13th day of October, 1881, 425 steer hides of the
129 weight, subject to correction, [of] 22,000 pounds, to be transported from Kansas City to Milwaukee, and to be delivered to the consignee or owner at Milwaukee, and consigned "to the shipper's order—notify Goetz & Luening, Milwaukee, Wis," and that said Du Bois then and there also annexed to said bill of exchange an invoice or value bill, so called, in writing, made by said Du Bois, and reciting and representing that he had shipped, on said 13th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., "consigned to shipper's order—notify Goetz & Luening, Milwaukee, Wis.," 425 steer hides of the net weight of 24,862 pounds, valued at 9 & ¾ cents per pound, amounting to the sum of $2,527.81, and that the sight draft for $1,685.00 had been made on the plaintiffs; that thereupon, on said 13th day of October, 1881, at said Kansas City, said Du Bois duly endorsed the said bill of lading in blank, and discounted with and transferred to said defendant bank the said bill of exchange, and deposited with said defendant said bill of lading and said invoice or value bill annexed as collateral
130 security for the payment of said draft.

Said defendant further alleges that it discounted said bill of exchange for said Du Bois before maturity, in good faith, for value and without notice of any defect or infirmity of said bill of lading and in the full belief that said bill of lading was genuine and without any knowledge to the contrary thereof.

Said defendant denies that it discounted said draft or took said security in bad faith or with knowledge or reason to believe that said bill of lading was a forgery or that it was not issued by said railroad company or by its authority.

Said defendant denies that it at any time had any knowledge or reason to believe that said Du Bois had not delivered to said railroad company any hides for shipment.

Said defendant denies that it had any knowledge or reason to believe that said value bill was fraudulently made or annexed to said bill of lading and said draft by said Du Bois.

Said defendant denies that it had any knowledge or reason
131 to believe that any of the recitals contained in said bill of lading and said value bill were in whole or part false or untrue.

Said defendant has no knowledge or information sufficient to form a belief as to whether plaintiffs were familiar with the signature or handwriting of said Du Bois, J. Mac Lelland, or the railroad agent who purported to have signed and issued said bill of lading above mentioned.

Said defendant admits that E. K. Thornton was at the times mentioned, and still is, its cashier.

Said defendant denies that it guaranteed or intended to guarantee the correctness of the said bill of lading or value bill, and alleges that it took the same merely as collateral security and in the ordinary course of business.

Said defendant admits that plaintiffs accepted and paid said draft, but denies that it, said defendant, has in any way whatever injured or damaged said plaintiffs.

Said defendant alleges that it has no knowledge or information sufficient to form a belief as to the agreement of plaintiffs
132 with said Du Bois set out in the complaint herein.

Said defendant admits that on or about the 17th day of October, 1881, said Du Bois, at Kansas City, Missouri, made his certain draft or bill of exchange in writing, dated on that day, whereby he requested the plaintiffs herein at sight to pay to the order of E. K. Thornton, cashier of said defendant, the sum of $2,000.00, and to charge the same to account of said Du Bois.

Said defendant further alleges that at or about the same time, to wit, on said 17th day of October, 1881, the said Du Bois annexed to said bill of exchange a bill of lading purporting to have been made and issued by the Chicago & Alton Railroad Company, a common carrier doing business at Kansas City, Mo., and reciting, among other things, that said railroad company had received from said Du Bois on said 17th day of October, 1881, 450 steer hides, of the weight, subject to correction, [of] 23,000 pounds, to be transported from Kansas City to Milwaukee, and to be delivered to the consignee or owner at Milwaukee, and consigned "to the shipper's order—
133 notify Goetz & Luening Milwaukee, Wis.;" and that said Du Bois then and there also annexed to said bill of exchange an invoice or value bill, so called, in writing, made by said Du Bois, and reciting and representing that he had shipped on said 17th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., "consigned to shipper's order—notify Goetz & Luening, Milwaukee, Wis.," 450 steer hides, of the net weight of 29,555 pounds, valued at 9 & ¾ cents per pound, amounting to the sum of $3,066.01, and that the sight draft for $2,000 had been made on the plaintiffs; that thereupon on said 17th day of October, 1881, at said Kansas City, said Du Bois duly endorsed the said bill of lading in blank, and discounted with and transferred to said defendant bank the said bill of exchange and deposited with said defendant said bill of

lading and said invoice or value bill annexed as collateral security for the payment of said draft.

Said defendant further alleges that it discounted said bill of
134 exchange for said Du Bois before maturity, in good faith, for value, and without notice of any defect or infirmity of said bill of lading and in the full belief that said bill of lading was genuine, and without any knowledge to the contrary thereof.

Said defendant denies that it discounted said draft or took said security in bad faith or with knowledge or reason to believe that said bill of lading was a forgery or that it was not issued by said railroad company or by its authority.

Said defendant denies that it at any time had any knowledge or reason to believe that said Du Bois had not delivered to said railroad company any hides for shipment.

Said defendant denies that it had any knowledge or reason to believe that said value bill was fraudulently made or annexed to said bill of lading and said draft by said Du Bois.

Said defendant denies that it had any knowledge or reason to believe that any of the recitals contained in said bill of lading and said value bill were in whole or part false or untrue.

Said defendant has no knowledge or information sufficient
135 to form a belief as to whether plaintiffs were familiar with the signature or handwriting of said Du Bois, J. Mac Lelland, or the railroad agent who purported to have signed and issued said bill of lading above mentioned.

Said defendant admits that E. K. Thornton was at the time mentioned, and still is, its cashier.

Said defendant denies that it guaranteed, or intended to guarantee, the correctness of the said bill of lading or value bill, and alleges that it took the same merely as collateral security and in the ordinary course of business.

Said defendant admits that plaintiffs accepted and paid said draft, but denies that it, said defendant, has in any way whatever injured or damaged said plaintiffs.

Said defendant alleges that it has no knowledge or information sufficient to form a belief as to the agreement of plaintiffs with said Du Bois set out in the complaint herein.

Said defendant admits that on or about the 19th day of Oc-
136 tober, 1881, said Du Bois, at Kansas City, Missouri, made his certain draft or bill of exchange in writing, dated on that day, whereby he requested the plaintiffs herein at sight to pay to the order of E. K. Thornton, cashier of said defendant, the sum of $2,000.00, and to charge the same to account of said Du Bois.

Said defendant further alleges that at or about the same time, to wit, on said 19th day of October, 1881, the said Du Bois annexed to said bill of exchange a bill of lading purporting to have been made and issued by the Chicago & Alton Railroad Company, a common carrier doing business at Kansas City, Mo., and reciting, among other things, that said railroad company had received from said Du Bois, on said 19th day of October, 1881, 450 steer hides of the weight, subject to correction, [of] 22,000 pounds, to be transported from Kansas

City to Milwaukee, and to be delivered to the consignee or owner at Milwaukee, and consigned "to the shipper's order—notify Goetz & Luening, Milwaukee, Wis.," and that said Du Bois then and there also annexed to said bill of exchange an invoice or value bill, so
137 called, in writing, made by said Du Bois, and reciting and representing that he had shipped on said 19th day of October, 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., "consigned to order—notify Goetz & Luening, Milwaukee, Wis.," 450 steer hides of the net weight of 28,954 pounds, valued at 9 & ¾ cents per pound, amounting to the sum of $3,037.07, and that the sight draft for $2,000.00 had been made on the plaintiffs; that thereupon, on said 19th day of October, 1881, at said Kansas City, said Du Bois duly endorsed the said bill of lading in blank, and discounted with and transferred to said defendant bank the said bill of exchange and deposited with said defendant said bill of lading and said invoice or value bill, annexed as collateral security for the payment of said draft.

Said defendant further alleges that it discounted said bill of exchange for said Du Bois before maturity, in good faith, for value, and without notice of any defect or infirmity of said bill of lading,
138 and in the full belief that said bill of lading was genuine and without any knowledge to the contrary thereof.

Said defendant denies that it discounted said draft, or took said security in bad faith, or with knowledge or reason to believe that said bill of lading was a forgery, or that it was not issued by said railroad company, or by its authority.

Said defendant denies that it at any time had any knowledge or reason to believe that said Du Bois had not delivered to said railroad company any hides for shipment.

Said defendant denies that it had any knowledge or reason to believe that said value bill was fraudulently made or annexed to said bill of lading and said draft by said Du Bois.

Said defendant denies that it had any knowledge or reason to believe that any of the recitals contained in said bill of lading and said value bill were in whole or part false or untrue.

Said defendant has no knowledge or information sufficient to form a belief as to whether plaintiffs were familiar with the signa-
139 ture or handwriting of said Du Bois, J. Mac Lelland, or the the railroad agent who purported to have signed and issued said bill of lading above mentioned.

Said defendant admits that E. K. Thornton was at the times mentioned, and still is, its cashier.

Said defendant denies that it guaranteed or intended to guarantee the correctness of the said bill of lading or value bill, and alleges that it took the same merely as collateral security, and in the ordinary course of business.

Said defendant admits that plaintiffs accepted and paid said draft, but denies that it, said defendant, has in any way whatever injured or damaged said plaintiffs.

Said defendant alleges that it has no knowledge or information

sufficient to form a belief as to the agreement of plaintiffs with said Du Bois set out in the complaint herein.

Said defendant admits that on or about the 24th day of October, 1881, said Du Bois, at Kansas City, Missouri, made his certain draft or bill of exchange in writing, dated on that day, whereby he
140 requested the plaintiffs herein at sight to pay to the order of E. K. Thornton, cashier of said defendant, the sum of $2,000.00, and to charge the same to account of said Du Bois.

Said defendant further alleges that at or about the same time, to wit, on said 24th day of October, 1881, the said Du Bois annexed to said bill of exchange a bill of lading purporting to have been made and issued by the Chicago & Alton Railroad Company, a common carrier, doing business at Kansas City, Mo., and reciting, among other things, that said railroad company had received from said Du Bois on said 24th day of October, 1881, 450 steer hides of the weight, subject to correction, [of] 22,000 pounds, to be transported from Kansas City to Milwaukee, and to be delivered to the consignee or owner, at Milwaukee, and consigned "to the shipper's order—notify Goetz & Luening, Milwaukee, Wis.;" and that said Du Bois then and there also annexed to said bill of exchange an invoice or value bill, so called, in writing, made by said Du Bois, and reciting and representing that he had shipped, on said 24th day of October,
141 1881, via said Chicago & Alton railroad, to Milwaukee, Wis., "consigned to order of Goetz & Luening, Milwaukee, Wis.," —— steer hides, of the net weight of —— pounds, valued at 9 & ¾ cents per pound, amounting to the sum of ——, and that the sight draft for $2,000.00 had been made on the plaintiffs; that thereupon, on said — day of October, 1881, at said Kansas City, said Du Bois duly endorsed the said bill of lading in blank and discounted with and transferred to said defendant bank the said bill of exchange, and deposited with said defendant said bill of lading and said invoice or value bill annexed as collateral security for the payment of said draft.

Said defendant further alleges that it discounted said bill of exchange for said Du Bois before maturity, in good faith, for value, and without notice of any defect or infirmity of said bill of lading, and in the full belief that said bill of lading was genuine, and without any knowledge to the contrary thereof.

Said defendant denies that it discounted said draft or took said security in bad faith or with knowledge or reason to believe
142 that said bill of lading was a forgery, or that it was not issued by said railroad company or by its authority.

Said defendant denies that it at any time had any knowledge or reason to believe that said Du Bois had not delivered to said railroad company any hides for shipment.

Said defendant denies that it had any knowledge or reason to believe that said value bill was fraudulently made or annexed to said bill of lading and said draft by said Du Bois.

Said defendant denies that it had any knowledge or reason to believe that any of the recitals contained in said bill of lading and said value bill were in whole or part false or untrue.

Said defendant has no knowledge or information sufficient to form a belief as to whether plaintiffs were familiar with the signature or handwriting of said Du Bois, J. Mac Lelland, or the railroad agent who purported to have signed and issued said bill of lading above mentioned.

Said defendant admits that E. K. Thornton was at the times mentioned, and still is, its cashier.

143 Said defendant denies that it guaranteed or intended to guarantee the correctness of the said bill of lading or value bill, and alleges that it took the same merely as collateral security and in the ordinary course of business.

Said defendant admits that plaintiffs accepted said draft, but denies that it, said defendant, has in any way whatever injured or damaged said plaintiffs, or had not acted in good faith in obtaining said acceptance.

Said defendant further alleges that this last above-mentioned draft is the draft on which suit has been brought by it against these same plaintiffs in this court, and which said action has been consolidated herewith.

Said defendant admits that said plaintiffs have ever since refused, and still do refuse, to honor or pay said last-mentioned draft.

Said defendant has no knowledge or information sufficient to form a belief as to whether "towards the end of the month of October, (1881,) these plaintiffs became somewhat uneasy" on any account whatever, or whether they had suspicions aroused or abated

144 at any time or for any cause.

Said defendant has no knowledge or information sufficient to form a belief as to what information plaintiffs received "towards the 31st of October, 1881," or at any other time.

Said defendant has no knowledge or information sufficient to form a belief as to whether plaintiff ever had any business dealings with said Du Bois prior to the transactions alluded to in the complaint.

Said defendant denies that it had any knowledge of any "crookedness" or evil disposition on the part of said Du Bois, and denies that the defendant knew of any forgeries on the part of said Du Bois.

Said defendant has no knowledge or information sufficient to form a belief whether said Du Bois ever had any credits to his accounts with these plaintiffs.

Defendant denies that it was a party to any fraudulent scheme on the part of said Du Bois or any one else.

Said defendant denies that plaintiff acted with due care and diligence.

Said defendant denies that said plaintiff had any reason to

145 believe that the endorsement of said defendant on said papers would be taken or considered by these plaintiffs or any one else as a guarantee of their absolute correctness, or as a guarantee that this defendant was personally cognizant of any of the facts stated in said documents.

Said defendant denies that these plaintiffs were misled in any way or at any time by this defendant.

Said defendant alleges that it presented said drafts, bills of lading,

and value bills in the ordinary course of business, and represented nothing to the plaintiffs, except that it was the owner of the drafts, and held the bills of lading, &c., as collateral security for the payment thereof.

Said defendant denies that it connived with said Du Bois or any one else to obtain money or anything else by fraud from any one.

Said defendant denies that it is indebted to the plaintiffs in any sum whatever.

Wherefore defendant demands that plaintiff's complaint be dismissed.

146 FINCHES, LYNDE & MILLER,
Defendant's Attorneys.

STATE OF MISSOURI, } ss:
Jackson County, }

E. K. Thornton, being first duly sworn, on oath says that he is the cashier of the Bank of Kansas City, the defendant above named; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to those matters therein stated upon information and belief, and as to those matters he believes it to be true. Deponent further says that the reason why this verification is not made by the defendant is that it is a corporation: that the deponent is an officer of the same, to wit, cashier, and that his knowledge is derived from his connection with & management of the matters & things alleged in said answer, & from the books of said defendant.

E. K. THORNTON.

Subscribed and sworn to before me this 28th day of August, A. D. 1882.

[SEAL.] WILL. S. COWHERD,
Notary Public.

STATE OF MISSOURI, } ss:
County of Jackson, }

147 I, William Z. Hickman, clerk of the county court within and for the county and State aforesaid, do hereby certify that Will. S. Cowherd, Esq., whose name appears to the foregoing affidavit of E. K. Thornton, is, and was at the time of signing the same, a notary public within and for said county, duly appointed, commissioned, and qualified, that full faith and credit is and ought to be given to all his official deeds as such; that his commission was dated the 26th day of April, 1882, and will expire on the 26th day of April, A. D. 1886, and that his signature thereto is genuine, and that the same is executed according to the laws of Missouri.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office in the city of Independence, this 28th day of August, A. D. 1882.

[SEAL.] WM. Z. HICKMAN, *Clerk.*

October 20, 1882. Depositions on behalf of The Bank of Kansas City received per express from Kansas City, Mo., and filed.

January 17, 1883. Depositions on behalf [of] August W.
148 Goetz, Jr., *et al.*, received per express, and filed.

And now, at this same term, to wit, January term, A. D. 1883, and on the sixty-second day thereof, to wit, on the twenty-second day of March, A. D. 1883—present, the honorable Charles E. Dyer, district judge, presiding—the following proceedings were had, to wit:

Trial.

AUGUST W. GOETZ, JR., & AUGUST F. LUENING
vs.
BANK OF KANSAS CITY.

BANK OF KANSAS CITY
vs.
AUGUST W. GOETZ, JR., & AUGUST F. LUENING. } At Law.

This day came the parties, by their counsel, Mr. Cotzhausen appearing for August W. Goetz, Jr., and August F. Luening and Messrs. H. M. Finch and O. H. Dean for the Bank of Kansas City, and the issues herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit: William Farries, John Martin, John B. Neuer, John Blake, Thomas Stearns, William Lawler, Joseph M. Alcott, Reuben Strong, E. W. Robbins, E. B. Bolens, Samuel Chandler, and James F. Trowell, twelve free, honest, and lawful men of the district, who were severally sworn and empan*nel*led, and the trial not being concluded the same was adjourned until to-morrow morning.

149 March 23, 1883. This day came the parties, by their counsel, and the trial of the issues herein was resumed, and not being concluded the same was adjourned until to-morrow morning.

March 24, 1883. This day came the parties, by their counsel, and the trial of the issues herein was resumed, and not being concluded the same was adjourned until Monday morning next.

March 26, 1883. This day came the parties, by their counsel, and the trial of the issues herein was resumed, and not being concluded the same was adjourned until to-morrow morning.

And afterwards, to wit, on the sixty-sixth day of said term, to wit, on the twenty-seventh day of March, A. D. 1883—present, the honorable Charles E. Dyer, district judge, presiding—the following proceedings were had, to wit:

Verdict.

AUGUST W. GOETZ, JR. & AUGUST F. LUENING
vs.
BANK OF KANSAS CITY.

BANK OF KANSAS CITY
vs.
AUGUST W. GOETZ, JR., & AUGUST F. LUENING. } At Law.

150 This day came the parties, by their counsel, and the trial

of the issues herein was resumed; and the jurors of the jury aforesaid, being charged by the court on their said oaths, respectively, do say that upon the claim made by August W. Goetz, Jr., and August F. Luening against The Bank of Kansas City they find the issues in favor of said bank, and that upon the demand of said Bank of Kansas City against the said Goetz & Luening they find the issue in favor of said bank, and assess its damages at two thousand one hundred and ninety-seven dollars and sixteen cents.

And came the said August W. Goetz, Jr., and August F. Luening, by their counsel, and moved the court for a new trial for reasons filed, as follows:

Motion for New Trial.

Circuit Court of the United States, Eastern District of Wisconsin.

August W. Goetz, Jr., & August F. Luening
vs.
Bank of Kansas City.

Bank of Kansas City
vs.
August W. Goetz, Jr., & August F. Luening.

} Consolidated.

The above-named plaintiffs, August W. Goetz, Jr., and August F. Luening, upon the record, papers on file, proceedings heretofore had, and the minutes of the judge, move for a new trial of the
151 above-consolidated causes upon the following grounds, to wit:

1st. The court erred in giving improper instructions to the jury.

2nd. The court erred in withholding the case from the jury under the evidence.

3rd. The court erred in admitting improper evidence on part of defendant, Bank of Kansas City.

4th. The court erred in not admitting proper evidence on part of the plaintiff.

COTZHAUSEN, SYLVESTER & SCHEIBER,
Pl'fs' Att'ys.

And afterwards, to wit, on the ninety-fifth day of said term, to wit, on the eighteenth day of May, A. D. 1883—present, the honorable John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and the honorable Charles E. Dyer, district judge—the following proceedings were had, to wit:

Hearing of Motion for New Trial.

AUGUST W. GOETZ, JR., & AUGUST F. LUENING *vs.* BANK OF KANSAS CITY. BANK OF KANSAS CITY *vs.* AUGUST W. GOETZ, JR., & AUGUST F. LUENING.	At Law. Consolidated.

152 This day the motion of the plaintiffs, August W. Goetz, Jr., and August F. Luening, for a new trial came on to be heard, Messrs. F. W. Cotzhausen and Israel Cowen appearing for said plaintiffs and Mr. H. M. Finch for the defendant, Bank of Kansas City, and was argued by said counsel; and, the hearing not being concluded, the same was adjourned until to-morrow morning.

MAY 19, 1883.

(Present: The honorable John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and the honorable Charles E. Dyer, district judge.)

This day came the parties by their counsel and the hearing of the motion of the plaintiffs, August W. Goetz, Jr., and August F. Luening, for a new trial was resumed, and being concluded the court took the same under consideration.

And afterwards, to wit, on the ninety-seventh day of said term, to wit, on the twenty-first day of May, A. D. 1883—present, the honorable John M. Harlan, associate justice of the Supreme Court of the United States, assigned to this circuit, presiding, and the
153 honorable Charles E. Dyer, district judge—the following proceedings were had, to wit:

Order Overruling Motion for New Trial.

AUGUST W. GOETZ, JR., & AUGUST F. LUENING *vs.* BANK OF KANSAS CITY. BANK OF KANSAS CITY *vs.* AUGUST W. GOETZ, JR., & AUGUST F. LUENING.	At Law. Consolidated.

The motion to set aside the verdict of the jury and for a new trial in the above consolidated causes made by August W. Goetz, Jr., and August F. Luening, who were plaintiffs in one of said causes and defendants in the other as the same were originally entitled, having been heard, on consideration thereof it is ordered by the court that said motion be, and hereby is, overruled, and that judgment in favor of said bank be entered upon the verdict, to which ruling the said Goetz & Luening, by their counsel, duly excepted.

Judgment.

Whereupon it is considered and adjudged by this court now here that the said August W. Goetz, Jr., and August F. Luening take nothing from the Bank of Kansas City, on the ground of the various trespasses and grievances complained of by them, and that
154 the said Bank of Kansas City do have and recover of the said August W. Goetz, Jr., and August F. Luening the sum of two thousand one hundred and ninety-seven dollars and sixteen cents damages so as aforesaid assessed by the jury in favor of said bank, together with one hundred and eighty-three dollars and ten cents, its costs about its said suit in this behalf by it expended, and that it have execution therefor.

Judgment roll signed May 21st, A. D. 1883.

EDWARD KURTZ, *Clerk.*

Damages --	$2,197 16
Costs------	183 10
	$2,380 26

Judgment roll filed May 21st, A. D. 1883.

EDWARD KURTZ, *Clerk.*

And same day bill of exceptions signed and filed, as follows:

Bill of Exceptions.

United States Circuit Court for the Eastern District of Wisconsin.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING, Pl'ffs, *vs.* BANK OF KANSAS CITY, Def't.	Consolidated by order of court under date of August 7, 1882, with the cause first above entitled.
BANK OF KANSAS CITY, Pl'ff, *vs.* AUGUST W. GOETZ and AUGUST F. LUENING, Def'ts.	

155 Be it remembered, that these causes, having been by order of court previously consolidated, came to be tried on the 22nd day of March, A. D. 1883, and a jury being duly empan*nel*led and sworn, the Hon. Charles E. Dyer, judge, presiding, the following proceedings were had.

August F. Luening, one of the plaintiffs, being sworn, testified on behalf of plaintiffs as follows:

In summer & fall of 1881 Goetz and I were commission merchants, under the firm name of Goetz & Luening, doing business and residing at Milwaukee. I first made the acquaintance of Du Bois in 1872 or 1873, at Kansas City, while I was traveling for Pfister & Vogel Leather Co. At that time Du Bois had a very high standing, and was considered one of the best business men in the city, and was doing a large hide business. Since then I

have met him several times between 1873 and 1877. Since then I have not met him; have not been in Kansas City. During all that time his standing was good. In 1877, or spring of 1878, while I was a member of the firm of Luening & Bautz, commission dealers in hides, at Milwaukee, Du Bois shipped us
156 some sheep skins, which we sold for him on commission. After deducting our compensation, either we sent him our check or he drew on us for the proceeds.

On October 10, 1881, I received a telegram from Du Bois, as follows:

"OCTOBER 10TH, UNION DEPOT, KANSAS CITY, 1881.

"To Luening & Bautz, 144 West Water street, Milwaukee:

"What can you sell four hundred green salt hides, fifty average? What will you advance on B. L. shipment as above?

(Signed) "J. N. DU BOIS."

"B. L." means "bill of lading."

To this telegram I answered by telegram of same date, as follows:

"Market here to-day 9 & ¾ for No. 1 light hides. Will pay draft for two-thirds value, bill of lading attached.

(Signed) "GOETZ & LUENING."

We also sent Du Bois a letter the same day, in which we repeated the above message, and further said:

"If hides in good condition and No. 1, can sell them readily. Commission is 2½%. Could sell all hides you may ship to this market."

In answer to our telegram of October 10th we received a letter from Du Bois, dated at Kansas City, October 10th, 1881, as follows:

"Messrs. Goetz & Luening, Milwaukee, Wis.

"GENTLEMEN: I have this day shipped a car-load of G. S.
157 hides [meaning green salt hides], invoice of which I inclose, and have made sight draft on you at the rate of 6½ cents per pound, which is two-thirds of market value, as stated in your dispatch of date (9¾ cents per pound). Please honor draft. In couple of days I may ship you another car-load if I cannot do better here.

"Yours, truly,

"J. N. DU BOIS,
"Per J. M."

J. M. means J. Mac Lellan.

I have the invoice that came with that letter. On October 17th I sent Du Bois a letter, as follows:

"J. N. Du Bois, Kansas City, Mo.

"DEAR SIR: Your two bills for hides received. Two drafts presented and paid. Whenever you want to ship us any more hides you must either bill them directly to us or not ship at all.

"Respectfully,

"GOETZ & LUENING."

The two drafts referred to in that letter are those now shown me. Those papers came attached together in the manner now presented—that is, draft, invoice or value bill, and bill of lading.

The first draft is of October 11th, 1881, for $1,710, and the other is of October 12th, 1881, for $1,685.

The acceptances on the face of these drafts are in my hand-
158 writing. I made them payable at Merchants' Exchange Bank. They were received at Milwaukee and accepted, one closely following the other.

(The said drafts of October 11th & October 12th, 1881, respectively, with bills of lading and invoices attached, & with endorsements, all as more fully described in the complaint herein, were here produced and offered by the plaintiffs and received by the court in evidence.)

When that first acceptance was presented I knew the signature of Du Bois, & I also knew the handwriting and signature of J. Mac Lellan from the first letter we received. I did not know the signature of Bridges, the railroad agent by whom the bills of lading purported to have been signed. When the first draft, bill of lading, and invoice arrived I made no inquiry in regard to the signatures on any of the papers, and accepted the draft, because the bill of lading was attached and I belived the bill of lading to be genuine. The endorsement of Du Bois on the bill of lading, in blank, and the endorsement of the bank on the invoice or value bill thereto attached influenced me to think the property belonged to the Bank of Kansas City and I was dealing with that bank, and upon our ac-
ceptance & payment of the draft the property mentioned in
159 the bill of lading and the invoice would be transferred from the bank to us. I thought that the bill of lading being in the shipper's name and endorsed by him in blank, & transferred to the Bank of Kansas City, the security of the bank on the value bill guaranteed the goods in the bill of lading.

I accepted the draft of October 12th in good faith. After the acceptance of that draft of October 12th, which acceptance is dated October 17th, I sent the letter to Du Bois, requesting him to bill hides thereafter shipped directly to us, because, in shipment of hides, they sometimes fall short in weight, and I wanted the hides consigned directly to us. To that letter we received a telegram in response from Du Bois, dated at Kansas City October 19th, as follows:

"To Goetz & Luening. Letter received. Future ship'ts will be made as you request."

"(Signed) J. N. DUBOIS."

In meantime we received from Du Bois a draft dated October 17th, with bill of lading and invoice attached (which draft and bill of lading and invoice thereto attached being here produced were, together with the endorsements thereon, offered by the plain-
160 tiffs, and received by the court in evidence, the same being the same draft of October 17th, 1881, and papers thereto attached fully described in the complaint.)

This draft of October 17th was accepted by us in good faith October 20th, 1881, payable at Merchants' Exchange Bank.

After the acceptance of this draft we received a letter from Du Bois, dated October 19th, 1881, in which he informed us that he sent direct bill of lading this time, and draft for $2,000; that he had been doing an extensive business for a number of years with Eastern cities, and as a rule had shipped goods to his own order, and generally had his bank place these drafts to his credit at once, and that when [the] bank did so it usually wanted to hold goods until paid. If drafts [were] not met the bank would hold in bill of lading title to stock, and could recoup themselves, but in present instances he would comply with request.

On October 20th, 1881, we sent Du Bois a telegram as follows:

"No hides arrived yet. You better trace them at once. No sale for heavy sole lea. Cows, harness, steers, and upper hides wanted."

"(Signed) GOETZ & LUENING."

On October 21st, 1881, we telegraphed Du Bois as follows:

161 "Bill of hides, Oct. 19, received. D'f't will be paid. Don't ship any more until we instruct you. None arrived yet. Trace them.

"(Signed) GOETZ & LUENING."

On same day, Oct. 21, 1881, we mailed Du Bois as follows:

"There is no market for sole leather, cows, heavy, spready cows, and harness. Steers are wanted. We have telegraphed you to ship no more hides until we instruct you. No car in yet, and we don't want many on hand at one time. If we have one or two cars at a time can get better prices. If an accommodation to you, you may ship as you are accustomed to when sending more.

"(Signed) GOETZ & LUENING."

On October 27th, 1881, we received from Du Bois a telegram, dated that day, as follows:

"During my absence from city my foreman made shipment 23, not knowing your order. Please protect draft. Have any arrived yet?

"(Signed) J. N. DU BOIS."

We answered this telegram by telegram as follows:

"Accepted and paid all your drafts promptly, but no hides in sight. Closely trace and answer quickly.

"(Signed) GOETZ & LUENING."

In the meantime, on October 22d, 1881, a fourth draft had arrived, and was accepted by us on that day. That was the draft here
162 produced, made by Du Bois for $2,000, dated October 19th, 1881, with bill of lading and invoice thereto attached, as now here presented. It was the first one where the goods are billed to Goetz & Luening directly. (Which draft and bill of lading and invoice thereto attached, being the same draft of October 19th, 1881, and papers thereto attached, fully described in the complaint herein,

were here offered by the plaintiffs and received by the court in evidence.)

The draft now shown me, being a draft made by Du Bois, under date of October 24th, 1881, for $2,000, was accepted by us on October 28th, 1881, in good faith. I think the bill of lading now attached to the draft is the same that was attached to it then. (Which last-mentioned draft and bill of lading and the invoice thereto attached, being the same draft of October 24th, 1881, and papers thereto attached, fully described in the complaint herein, were here offered by the plaintiffs and received by the court in evidence.

On October 28th, 1881, we had paid the first four drafts and accepted the fifth one. We telegraphed to Otto Albrecht, a young man in our employ, at that time traveling through that section of the country to pick up trade & sell produce for us, and he being on that day at Kansas City, as follows:

"Call on freight agent Chicago & Alton there and see when hides were shipped by Du Bois to us. Answer quickly.

"(Signed) GOETZ & LUENING."

163 This telegram to Albrecht was sent after we had accepted said fifth draft.

Albrecht was not familiar with our transactions with Du Bois. He had nothing to do with that business. He happened to be at Kansas City that day and we sent him the telegram. Albrecht telegraphed as an answer as follows the same day, October 28th:

"No hides shipped by Chicago & Alton from Du Bois.

"(Signed) ALBRECHT."

On same day we wrote Albrecht a letter in German, which, translated, is as follows:

"I telegraphed you to-day, 'Call on freight agent of the Chicago & Alton road and see when hides were shipped by Du Bois to us.' Du Bois from Kansas City shipped us until now four car-loads of hides on commission, on which he had drawn $7,500, and which we accepted and paid. The hides were sent on the following days from Kansas City, billed Oct. 11th, Oct. 13th, Oct. 17th, and Oct. 19th. Until to-day no hides have arrived. For this reason we ask you to call at the agent's and [see] when & if the hides have been sent. You can also call on J. N. Du Bois and tell him to send no more hides until at least one car has arrived, so we could inspect it."

On the same day, October 28th, 1881, we also telegraphed the freight agent at Kansas City as follows:

164 "W. E. Bridges, freight agent Chicago & Alton, Kansas City:

"When did hides shipped by J. N. Du Bois and billed Oct. 11, 13th, 17th, and 19th leave Kansas City? Ans. quick."

To this telegram we received a telegram in response, as follows:

"No such bills of lading received by, or shipments made by, this company.

"W. E. BRIDGES, *Agent.*

"Oct. 28th."

The following described letters were received by us from Du Bois between the time of making the contract and October 28th, 1881:

Letter dated October 12th, stating:

"I enclose invoice of another car-load of G. S. hides, against which I drew ⅔ value. I trust you will be able to sell them to advantage, so as to enable me to continue my shipments."

Letter of October 17th recites a third shipment to us of "450 G. S. hides, as per invoice of date, value $366.01," in which writer further says:

"Against which I have made sight draft of $2,000 on you through Bank of Kansas City, which please honor. I trust you will be able to make satisfactory sales of those hides, so as to enable me to continue my shipments."

Letter of October 18th, in which he writes:

"As your Mr. Luening is aware, there is a large number of Texas cattle packed here during fall, and as season has opened, would like to know what you can place Texas sole lea., cow hides;
165 on steers can do better here, as I sold 1,000 to Louisville at 11½ cts. Please advise me."

Letter of October 19th, of which contents have already been given (see above).

Letter of October 21st, in which Du Bois acknowledges receipt of one despatch of October 20th, and then continues as follows:

"Will have shipments that are behind traced at once, but believe the delay has arisen partly from the high water, partly from an excessive pressure of freight at this point, which, however, I do not expect will be of long duration. Same on all incoming roads, and goods which I usually receive in five to eight days are out since Oct. 1."

Letter of October 22nd, in which Du Bois acknowledges receipt of our telegram, and then continues, as follows:

"I find upon inquiry at the R. R. that freight is badly delayed, owing to high waters of the Mississippi. Trust hides will be soon to hand. You will find my heavy cows are all Texas, and splendid sole lea. stock."

All the letters, telegrams, drafts, invoices, and bills of lading above referred to were duly offered and received in evidence.

When I received these letters from Du Bois seeking to explain the cause of delay, I had no reason to mistrust them. The first intimation or suspicion of something wrong I had was the dis-
166 patch from Albrecht, followed by the dispatch from Bridges.

Then I telegraphed to the Bank of Kansas City on October 28th, 1881, about 6 o'clock p. m., as follows:

"Accepted and paid draft of J. N. Du Bois promptly. No hides in sight. Closely trace and answer quickly."

This was sent after the information from Albrecht & Bridges was received. At the same time I sent a telegram to Du Bois as follows: "Accepted and paid all your drafts promptly, but no hides in sight. Closely trace and answer quickly."

The bank never answered that telegram sent to it, either by telegram or letter, and Du Bois never answered that telegram sent to him.

Thereupon I sent my partner, A. W. Goetz, Jr., to Chicago with the bills of lading to the agent of the Chicago and Alton (Northern) road. He left on the morning of October 29th. Mr. Sylvester, one of plaintiffs' attorneys in this case, either went with my partner or met him at Chicago. I have no personal knowledge of what transpired with them, either in Chicago or at Kansas City.

All the foregoing telegrams were offered and received in evidence.

Cross-examined by Mr. FINCH, the witness testified as follows:

167 I was well acquainted with Du Bois, & had great confidence in his honesty and integrity; and when he wrote us the letters which I have read in evidence that he had shipped the property to us I believed it.

I accepted the drafts because the bills of lading were attached, as agreed with him. Before this I had no communications or business transactions with the Bank of Kansas City.

I was familiar with the way in which this property was to come from Kansas City to Milwaukee. It would come by cars. There were different lines from Kansas City. In the usual course of business it would take a car containing property of this kind six to eight days to come from Kansas City to Milwaukee.

(Witness is here handed the four several drafts which were accepted and paid by plaintiffs, and which were offered in evidence.)

The first of these drafts, dated October 11th, I accepted on October 14th. The second of said drafts, dated October 12th, I accepted October 17th. The third of said drafts, dated October 17th, I accepted October 20th. The fourth of said drafts, dated October 19th,

168 I accepted October 22nd. The fifth draft, dated October 24th, I accepted October 28th. Between the 11th of October, and until the evening, about 6 o'clock, of October 28th, we had no communication or correspondence at all with the Bank of Kansas City. When I found the property did not come forward in the usual course of business, I did not telegraph or communicate with the bank, because I had entered into a contract with Du Bois. That is the only reason.

GEORGE SYLVESTER, being sworn on behalf of plaintiffs, testified as follows:

In the fall of 1881, I was a member of the law firm of Cotzhausen, Sylvester & Scheiber. Early on Saturday, October 29th, 1881, I went to Chicago to see the chief of police of that city, and ascertain what could be done to cause the arrest of Du Bois.

Q. Please state what was said or done by you at that time in relation to Du Bois' arrest.

Question objected to by defendant's counsel, as calling for hearsay evidence, and as being irrelevant and incompetent, and any and all conversation between witness and the chief of police at Chicago, relating thereto, also objected to for same reasons.

Objection sustained. To which ruling the plaintiffs duly excepted.

169 Myself and Mr. Goetz arrived at Kansas City late on Sunday. We went to house of chief of police. He said he did not arrest Du Bois.

Q. What, if anything, was said or done by you at that time in relation to Du Bois' arrest?

Question objected to, as hearsay, irrelevant and incompetent, and any and all conversation between witness and chief of police at Kansas City, relating thereto, also objected to for same reasons.

Objection sustained. To which ruling the plaintiffs duly excepted.

On next Monday we called at Bank of Kansas City, after bank opened at 9 or 9.30 o'clock a. m. We first spoke to Mr. Thornton, the cashier. He introduced me to the president, Mr Chick, who was in his private office. At that time I had a conversation with Mr. Chick, in regard to Du Bois and the acceptance in question. I recognized Mr. Chick to be the president of the bank. This interview was at the bank, on that Monday morning.

Q. Will you please give us the substance of that conversation?

Objected to by defendant.

170 COURT: I desire counsel to state what he expects to prove?

PLAINTIFFS' COUNSEL: I expect to show that at this interview, while none of the shipments had as yet arrived, some of the acceptances were paid and others not, there still were contined busines dealings and relations between the bank and Du Bois on the one side, and the plaintiffs, Goetz & Luening, on the other, in relation to said drafts, acceptances, and bills of lading, embracing both the forged bills of lading as well as the genuine one delivered at a subsequent date and attached to one of the drafts; and that, in the course of this conversation, the president stated he had known Du Bois to be unscrupulous, but shrewd; that he had come there to open an account in the preceding spring, that he, the president, had refused to take him as a customer on account of his bad reputation in business matters, and that he had only consented to accept him on the special request of one Slavens, a director and stockholder in the bank, and on agreement that the extent of his banking interest should be limited and confined to the discounting of drafts accompanied by collaterals, bills of lading, or the like.

DEFENDANT'S COUNSEL: We object, first, because it is hear-
171 say testimony as against the bank; second, because it is an attempt to drag into the case, by the declaration of one of the

attorneys for the plaintiffs, a conversation between the plaintiffs attorney and an officer of the bank after the transaction has ceased so far as the bank has any interest in it.

COURT: The objection is sustained, but subject to the right of the plaintiffs to renew their present offer if at any time it shall appear that anything in relation to this transaction was done after the 28th of October, or after the drafts were accepted.

To which ruling plaintiffs duly excepted.

OTTO ALBRECHT, being sworn on behalf of plaintiff, testified as follows:

I am clerk in a coal yard. In the fall of 1881 I was in the employ of Goetz & Luening. I recollect the time I was at Kansas City in October, 1881, traveling for Goetz & Luening, and selling produce. While there I received the dispatch from them now shown me. A day later I received a letter also. At the time I got that dispatch I knew nothing at all about this Du Bois matter & contract. When I got the dispatch I went to the freight agent & inquired about the hides.
172 He told me to go to Du Bois. I went there; saw Du Bois in his office. This was on Friday, October 28th, about 4 o'clock p. m. Du Bois said he had not shipped any hides to Goetz & Luening, but would ship some the same night. Hides were lying on the street, & he was loading a car. He said he would ship that car-load that night & send me the bill of lading for them to Spangler's place, where I stopped. A bill of lading was sent to Spangler's as promised. Spangler's clerk received a letter from him to my address after I had left Spangler's. I left there about 5 o'clock p. m., & went the next morning to Lexington. I never received the bill of lading, nor the letter. The clerk at Spangler's afterwards told me he sent the letter back to Du Bois. I returned to Kansas City on Sunday morning. I was at Lexington only Saturday.

Cross-examined, witness testified as follows:

I think it was Friday, October 28, I got the telegram, about one or two o'clock p. m. I went first to the general freight agent, near Spangler's, & he told me he knew nothing about it, and sent me to the freight agent, about a mile away from there. I went to that office, got information there, went to Du Bois, and he promised to send me a bill of lading up to Spangler's place. I
173 left town that afternoon, and did not see any bill of lading before I left. I never saw the bill of lading. I didn't go anywhere near Kansas City Bank, and did not see anybody connected with that bank.

JOSEPH S. CHICK, being sworn on behalf of plaintiffs, testified as follows:

I was elected president of the bank of Kansas City, I think, in 1878; ever since have been, & am now, president.

I don't know where Du Bois is now. He left Kansas City about the latter part of October, 1881. Have never heard from him since.

Have not taken steps to find out, by detective or anything of that kind, where he is. Have made some inquiries as to where he was of people that I thought would probably know. I am told he left on Friday night.

The following telegram—

"October 28th. Accepted & paid drafts of J. N. Du Bois promptly. No hides in sight. Closely trace & answer quickly.

"(Signed) GOETZ & LUENING."

we received. I think the bank received it on Saturday. The first time I saw it was on Monday morning, October 31st. I was at the bank on Saturday.

174 Q. Why didn't you answer it?

A. I will state, the cashier sent it down to Du Bois. He had no idea of any fraud at the time. It came back, and Monday morning it was lying on his desk when I came into the office. I read the dispatch, and I don't think it was five minutes after before Mr. Sylvester and Mr. Goetz came into the office, and I had taken no action on it at that time. I had no time, until they came in, to answer it. I did not, nor did the cashier or any other officer of the bank, within my knowledge, make any efforts to trace the hides as requested. I think I did know on Saturday that Du Bois was gone. I did not inform Goetz & Luening of it. I did not know he had absconded, or there was any cause to inform any one. I thought he had gone on business. We did not call on the freight agent about this matter, after receipt of this telegram, until Goetz & Sylvester came, because we suspected no fraud. We sent down to Du Bois to trace it up, & didn't suspect anything wrong about it.

Q. Is it a fact that at this time you also held accepted drafts, accompanied by forged bills of lading, against Trostel & Gallun, leather dealers in this city?.

175 A. I do not know whether we did or not at that time or any other time. It was a fact that outside of this paper against Goetz & Luening we held some forged bills of lading against other merchants and dealers in the United States, but we did not know it at that time. We have not put any of these others into suit. We charged them all to profit and loss.

Cross-examined by Mr. Finch, the witness testified as follows:

These drafts, charged to profit & loss, were not accepted. As to those bills of lading we had no knowledge at the time we held them, and until these transactions came to light, that they were forged.

Re-examined by plaintiffs' counsel, the witness testified as follows:

We have a draft on Trostel & Gallun for $1,100.00 that was not accepted. We may have had many other drafts against Trostel & Gallun that were paid. We also had a draft on some Indianapolis house that was not accepted & not paid.

Q. How long have you known Du Bois?

A. I probably saw him in 1874 for the first time. He was in

Kansas City when I went into business there. Our bank
176 is on corner Fifth & Delaware streets, one of the prominent business streets. Our bank has probably the largest capital of all the banks in the city. Its capital is $600,000, all paid up. Our bank first commenced to do business with Du Bois in March, 1881. At that time the population of Kansas City was about 60,000. There are five banks there, viz.: Bank of Commerce, Armour Bros. Banking Co., The Citizens' National, Merchants' National, and Bank of Kansas City. There is also a private concern there of Mills & Sons. When I first made the acquaintance of Du Bois he was dealing in hides & wool. He was a very extensive dealer.

Q. I understood you to say, or Thornton, the cashier, in the former testimony, that Du Bois' discounting with your bank ran up to about $100,000 a month?

A. I don't think so. I don't know that we ever discounted a note for him, while he was doing business or at any other time. We never loaned him any money. We may have allowed him to overdraw a very small amount. Our business with him was principally all exchange business—that is, he would ship a lot of hides or wool, we would cash his drafts on the bill of lading attached, and that was the end of the business. We would cash his drafts
177 when they were secured by shipments of merchandise, evidenced by bills of lading. We may have done in some cases otherwise. The rule of our business with him was—it was advances on shipments, which was all he required. He would deposit his drafts, with bills of lading attached, and check the money out as suited his convenience. The business relations were limited to that, because that was all he required.

It is a fact that when he first applied to us in the spring of 1881 we declined to receive him as a customer, because I didn't know the character of the business he wanted to transact. I thought he was a large receiver of hides and wool, and probably might want me to advance before the goods got to the Kansas City market. Du Bois was a prominent man in Kansas City. He seemed to have considerable influence, was a member of the Common Council, an active man, and of very good address. I had known him several years, & also knew what banks he had been doing business with before he came to me.

I knew he had considerable trouble in 1879 in one instance—whether on a forged bill of lading or not I don't remember, but he had some trouble.

178 Q. You knew that the newspapers in 1879 had published long articles about him, and his forging bills of lading, which he had discounted with drafts attached to other banks in Kansas City, did you not?

Objected to as irrelevant and immaterial.

Counsel for plaintiff states that he expects to show by this witness that he did not deal with Du Bois in the ordinary course of business, and that he could not have taken this paper in the ordinary

course of business—that means, in the ordinary course of banking business.

Objection sustained; to which ruling the plaintiffs duly excepted.

The reason for afterwards taking Du Bois as a customer at the bank, after having first declined him, was, we thought it would be a satisfactory account with the bank. We had talked it over with Mr. Slaven, one of the directors of the bank, and we decided to take the account. At that time Du Bois' business reputation was not generally known to me to be bad. At that time & all through the year 1881 I endeavored, to a certain extent, to inform myself as to the character, in matters of business, of the customers and persons with whom the bank dealt. At this time I did not make
179 any particular inquiries before I received Du Bois as a customer. I knew that he was a man that had been doing a large business in Kansas City at one bank. I never had any occasion to inquire into his business qualifications as early as 1879. In 1879 Du Bois was doing his banking business with Wight, the cashier of the Kansas City Savings Bank. In 1879 I called on Wight in relation to Du Bois' matters.

Q. What was the occasion of your calling on Wight, the cashier of that bank, in relation to those matters?

A. I heard there was a party at Kansas City with a large claim against Du Bois. As a friend of Wight I went up there; I think I got that information before any other bank in town. There was a probability of Du Bois' property being attached.

Q. You supposed at that time that Wight's bank had got stuck, and you offered your assistance to that bank?

A. I did not know whether they had or not. I may have sworn on a previous examination of mine that I went to Wight because I thought that bank had got largely stuck, and that I went to offer my assistance to that bank. I will now state I merely went to give
180 the information. As to the nature of the claim against Du Bois on which the Savings Bank of Kansas City, I at that time understood, was then stuck, I will state my recollection: I was informed there was a gentleman from Buffalo there with a large claim against Du Bois. I don't know what it had grown out of, but I inquired. I was telling you what took place before any publications in the city. I meant to say Wight did not then inform me what it grew out of, but said he would afterwards. My first impression of that transaction grew out of what this gentleman told me and what he told me subsequently; that was before any newspaper publication was made. But afterwards I was under the impression that I did not read those newspaper articles. I have read them since. I refer to the articles that I read in the Kansas City Times and Journal since this suit was commenced—in the files of the papers. At the time they were published I don't remember whether I read them or not. My impression is, I read one of the articles in 1879. On a former examination I don't think I swore that, although I kept the Kansas City papers—one of them at my house & one at the bank. I never
181 read anything about Du Bois' crooked transactions at that time. I said I did not remember reading them. Since I

read them in the files I think I had read one of the articles, and maybe more. They were articles published in 1879, at the time of this Buffalo matter.

Q. Did you not, by general reputation, at that time ascertain that it was a claim of $20,000, or thereabouts, which had grown out of a forging by Du Bois of bills of lading?

Objected to. Objection sustained. To which ruling the plaintiffs duly excepted.

Q. Was not, as early as the year 1879, Du Bois' reputation in point of business, and especially in point of honest dealing, bad?

A. I never heard anything against his reputation except this Buffalo transaction.

Q. Is it true, or is it not true, that the reputation of Du Bois was bad during the year 1880 in point of business, and especially in point of honesty?

A. Not to my knowledge.

Q. Is it true, or is it not true, that the general reputation of Du Bois was bad during the year 1881 in point of business dealing, and especially in point of honest dealing?

182 A. Not to my knowledge. We had a number of drafts protested at our bank during the summer of 1881 which Du Bois had drawn on absent partjes and which our bank had taken from him & discounted. That happened several times. It may have happened a large number of times. We took a very large number of drafts from Du Bois.

Q. He was a profitable customer, was he not?

A. No, sir; it did not turn out that way.

Q. But the rates of discounting amounted to a great deal in the course of a month, owing to his heavy dealings with your bank?

A. Yes: but there were other expenses connected with it. It was not all profit. We had to get currency to pay for those drafts. The rate of discount was ¼ to ½ of one per cent.

Q. You say it was not all profit. Is it not true that you have lost on Du Bois, on account of such drafts with bills of lading discounted by your bank, even prior to October, 1881?

A. Yes, sir.

Q. Do you recollect the time, a short time before these October transactions, about the month of August, 1881, when you discounted some $22,000 drafts, accompanied by shipments of wool and bills of lading, on a Boston house?

183 A. Yes, sir; there was that transaction. On that matter we lost largely. I will explain why we came to be a loser on that transaction, although we had bills of lading attached. The wool was shipped to Boston. I think we were imposed upon as to the weights in the bills of lading; and there was also a decline in the wool that helped to make it up. The wool did not turn out to be as much as he represented; and then there was a decline in the price besides. The bills of lading were not reliable. They turned out to be short. On that single matter our bank ran behind some $8,000—

33⅓ per cent. on the whole amount. That was all in the month of August, 1881.

Q. Is it not a fact that you got disgusted with Du Bois, thoroughly disgusted, as early as August, 1881?

A. No, sir; not exactly that way. After that shipment and the shortage, after it was ascertained there was a shortage, we were dissatisfied with his account, and expected to close it as soon as we could.

I don't know whether certain drafts accompanied by so-called bills of lading, which afterwards turned out to be forgeries, were
184 drawn by Du Bois on Cowan & Co., of Chicago, and passed through our bank in September, 1881. I do not mean to say there were no such drafts. I do not know whether such drafts came back protested.

I cannot say whether there were any such drafts, which we had discounted, drawn on Whitney & Graham, of Chicago, about that time, which came back protested. Our bank did a pretty large business. I did not give my attention to all the details of whom the drafts were drawn on. I remember we had drafts on Cowan & Co., and various parties. I don't remember whether they came back protested or not. I have an idea that we had one draft on Hartman & Co., of St. Louis, accompanied by bill of lading, that came back protested, and it was turned over to another house; could not state positively.

Q. Is it not a fact that the drafts were protested because the bills of lading in some instances were forgeries, and in others, as you have stated, impositions?

A. We never had any knowledge of a forged bill of lading until the 31st day of October, 1881. It is not a fact that I purposely remained ignorant of the facts and circumstance attending the
185 protest of these drafts. I cannot state that we took any pains to inquire into the particular facts and circumstances why these several drafts that our bank had discounted, accompanied by bills of lading, should come back protested. I can only answer by explaining what the usage of a bank is in such matters.

Counsel for Plaintiffs: I beg your pardon; you are the witness; please answer my question.

Court: Let him state the usage as to such papers in their bank at that time.

To which ruling plaintiffs duly excepted.

Witness: No, sir; I did not take any special pains, for the reason that it is a matter of very common occurrance. A merchant will ship a lot of grain to New York; the drafts come there, and for some reason a commission merchant wont pay *it*; it may be he is not in a position to do it; it may be he thinks they are drawn for too much, and he refuses to pay; the drafts come back, or are held under directions of the bank for settlement or other arrangement. That is a very common occurrence on shipments with bills of lading attached.

186 Q. After you had heard in 1879 that the savings bank got stuck, and after you had become stuck yourself in the

summer of 1881 on the Boston wool matter, did you continue to deal with Du Bois as with other customers.

Objected to as assuming facts not yet proven in this case.

COURT: The object of the question is, as I understand it, to ascertain from the witness whether, after his business with Du Bois in the summer of 1881, he continued—

COUNSEL FOR PLAINTIFFS: To deal with him as with ordinary customers.

COURT: That part of the question he may answer. The other part may be stricken out.

To which ruling plaintiffs duly excepted.

COURT: Answer this question—whether after August, 1881, you continued business relations with Du Bois.

A. Yes, sir. We dealt with him after that time as with an ordinary customer, just as we had done before, on the same limited basis. During all this time I did not know Du Bois to be shrewd, but unscrupulous.

Witness' attention is called to a former deposition of his,
187 taken in this case, from which deposition counsel for plaintiffs read (page 22) the following:

"Q. Did you not state, Mr. Chick, to us (meaning Mr. Sylvester, one of plaintiffs' counsel), in that interview, that when Du Bois first came to you to open an account you utterly refused to have anything to do with him, because you regarded him as slippery and unreliable?

"A. I don't remember of that; I may have said so."

WITNESS: I presume that is the question and the answer that I made at that time.

Q. State as to the following questions and proceedings:

"Q. Did you not state that to us?

"A. I do not remember it.

"Q. Do you deny that you said it?

"A. I don't deny it; no, sir. I don't think I used that language, though."

A. I think that is "it." "I don't deny it; no, sir. I don't think I used that language." That is what I said.

Q. Please look at your deposition at that time, and especially the following questions and answers:

"Q. Were there not considerable rumors in the community here about this Buffalo transaction, of which you have spoken?

188 "A. Well, I heard of it at the time, but I never heard of it afterwards—after a day or a day or two after I was informed of it.

"Q. You remember there were some articles in the newspapers about it, in which there were not any names called?

"A. I did not see the articles, but I heard of them."

[Q.] Did you then, in response to these questions, so testify?

A. Yes, sir. I recollect amongst the forged bills of lading accompanying Goetz & Luening's drafts one genuine one, under date of October 28th. I think that called for 450 green salted hides; that was not attached to the 5th acceptance when our bank first sent it up to Milwaukee. There was a forged bill of lading under even date with the acceptance at that time. I am told it was forged. The genuine bill of lading of October 28th came into my possession afterwards. After Du Bois left Kansas City, after October 31st, when Goetz & Sylvester were there, Mac Lellan, Du Bois' clerk, told me there was a genuine bill of lading for 450 hides that went to Milwaukee, and he said he would get it for me. I, of course, was glad to get it if I could. It went on for several days. I saw him twice about it, and finally he brought it to me about the 7th or 8th of November, and I sent it here to Mitchell's bank. Goetz &
189 Luening had accepted a draft for $2,000 on a forged bill of lading. I sent this bill of lading to the bank, with instructions to deliver it to Goetz & Luening on paying the $2 000 draft they had accepted and returned protested. Neither I nor our bank ever paid anything for this bill of lading—not a cent. Before my transaction with the bank at Milwaukee in connection with the genuine bill of lading the $2,000 draft and the forged bill of lading had come forward and had been accepted. I did not get this bill of lading from Du Bois, but got it from his clerk, the man that attended to his business, about a week or ten days after Du Bois had absconded. I did not say anything to Goetz and Sylvester about this genuine bill of lading while they were at Kansas City. I never heard where Du Bois was, or anything about that, since he left Kansas City. We asserted our rights to the very same hides represented by this bill of lading, because we had the bill of lading in our possession. That was the right we claimed it by. I did not claim it belonged to us, but went to Mac Lellan twice to get it, because he had promised to get and had not produced it.

Q. Are you ready to turn that over to us now?

A. If you pay the other draft we will turn it over.

Q. Not otherwise?

A. I leave that to my attorney to say.

190 Cross-examined, the witness testified as follows:

Two letters shown me, one dated Nov. 7, 1881, and the other Nov. 14, 1881, directed to David Ferguson, cashier, Milwaukee, Wis., were written by Mr. Thornton, cashier of Bank of Kansas City; one of these enclosed the genuine bill of lading.

Both letters were here offered in evidence with said genuine bill of lading as part of cross-examination:

Objected to by pl'ffs. Objection overruled. Plaintiffs duly excepted.

Re-examined by plaintiffs' counsel, the witness testified as follows:

Witness was here shown his deposition taken in this case on behalf of the defendant, and testified that in said deposition the following testimony was given by him:

"The Bank of Kansas City had two other bills of lading besides those involved in this controversy, which were forged. I do not remember when we first learned those two other bills of lading were forged. I suppose we found it out soon after they were returned. I don't remember the time the drafts attached to them were sent away from Kansas City. I think it was after the 28th.

"When Du Bois came to our bank to change his account, I did not accept it without hesitation. I hesitated because I did not care about handling his business, or taking customers of that
191 kind. We thought we might have to advance for him. When I was assured there would be no advances required, I took his account. That was the sole reason why I hesitated.

"I don't think I stated to Mr. Goetz and Mr. Sylvester that my reason for refusing to take his account was that he was slippery and unreliable in his dealings.

"Q. Do you deny that you said that in substance?

"A. I don't think I ever said it. I may have said in that interview that finally one of the directors of the bank came to me and interceded for Du Bois in such strong terms that finally I concluded to take his account. I know Mr. Slaven came with him and argued his case, and I did take his account. "After this Boston wool transaction we continued to do business with Du Bois as before. We supposed wool would pay the drafts when sales were made & final returns were rendered.

"Q. You did not watch him any closer after that, or watch him at all?

"A. I suppose we always looked after what was in the bills of lading, and we thought we had enough to cover the drafts in all the transactions; that was our agreement in the first place, and we acted on that in all our dealings."

WITNESS: The testimony so referred to and sworn to by me
192 at that time was correct to the best of my knowledge and belief.

Recross-examined, the witness testified as follows:

Prior to 1881 Du Bois never did any business at our bank, except a single transaction. He was buying wool at Lexington, Missouri. The bank there had an account with our bank. Du Bois requested me to guarantee payment of his agent's draft, because the bank at Lexington desired such guaranty before paying the draft, and I did guarantee its payment. I have no recollection as to how long prior to 1881 that was. It was a long time before 1881. After the Buffalo transaction Du Bois did business at Kansas City Savings Association. His business was very extensive at that bank. My means of information is as follows: The Bank of Kansas City has a very large majority of the correspondence of all the banks west of it. Drafts for purchase of wool in Colorado, New Mexico, & Kansas usually came to our bank. We could see by them there was a large business going on. This was since 1879 and before these drafts were drawn. These drafts I have mentioned were usually drawn against

shipments, bills of lading attached. Du Bois commenced
193 doing business at our bank latter part of March, 1881. Thornton came into the bank in January or February, 1881. He had previously resided in Kentucky.

Q. Which officer of the bank was it, yourself or Mr. Thornton, usually passed upon these bills of lading?

Objected, because custom has nothing to do with the case. Objection overruled. To which ruling plaintiffs duly excepted.

A. Mr. Thornton, cashier, I think, passed on all the bills of lading in question in this suit. My information at the beginning of the arrangement between Du Bois and Goetz & Luening was as follows: I either saw the letter or Mr. Thornton told me Goetz & Luening had agreed to pay his drafts drawn on two-thirds of the value of the hides. I refer to the telegram and letter put in evidence here, the arrangement by which Du Bois was authorized to draw on them. They came to the notice of the cashier, I suppose, when the business first commenced—when we took the draft of October 11th. Mac Lellan, who was clerk of Du Bois, brought these drafts to the bank, generally to the cashier. He would O K them, & then deposit them with the receiving teller to
194 his account current. They then went to Du Bois' credit on the books of the bank. The money was drawn out by check as any other bank account would be. The bank would make only the exchange, which was from $2.50 to $5 a thousand. We took drafts on Chicago at $2.50. When we found they were going to Milwaukee we charged for the difference in time. This money was checked out in the ordinary course of business. It was not applied on any pre-existing indebtedness. At that time Du Bois did not owe the bank anything on the books. Mr. Slaven, who came with Du Bois to the bank, was a prominent pork packer at Kansas City at that time. He was a director & stockholder in the bank. He was a man that stood very high in business circles. He had been dealing with Du Bois; sold him his hides & tallow. When we took these drafts we had no knowledge of the financial responsibility of the drawees, Goetz & Luening. We did not look them up; relied on the security in the bills of lading; supposed the drafts were all right. At that time we had no knowledge that there was anything fraudulent about the Boston transaction. Du Bois was a very
195 large dealer in hides & wool. He was a prominent citizen & member of the city council. He was a member of the board of trade, & on its arbitration committee. He was captain of the military company that embraced the leading young men of the city, and was considered a public-spirited young man. We were dissatisfied with Du Bois in reference to that Boston transaction, because the drafts were originally drawn on Boston parties. We relied on prompt payment. When they got to Boston drawees refused to pay, and rather than have drafts go back our cashier agreed to hold another house there, to which this wool was turned over, harmless, if they would pay the drafts. When they were not paid he called on Du Bois, who brought a Mr. Ewing, and Mr. Ewing gave a guaranty

for 10 per cent. of that amount, which was $2,700. We supposed that was ample for loss on the wool at that time. We asked for this indemnity to protect us in case there was a loss. At that time we had no knowledge there was anything wrong about the bills of lading. We did not get a final account [of] sales of this wool from Boston till some time in November, 1881, or even later
196 than that. The bills of lading appeared to be genuine upon their face. I have learned since that only one bill of lading of that whole lot was signed by the agent of the transportation company, but he did not have the wool at the time he signed that. That is the only one I ever heard [of with] any defect in that respect. Up the 31st of October our bank had received no information that we had received any forged bills of lading, and had no reason to suspect we had. I cannot give any idea of the number of bills of lading we received from Du Bois between March, 1881, & October, 1881. Prior to that time we never had any information concerning any forged bills of lading received by the bank. I think the business would run from $25,000 to $100,000 a month. I think $\frac{9}{100}$ was on the bills of lading. That summer Du Bois was buying hides & wool, & sometimes tallow, &c. He was buying in large quantities. I have heard it stated the wool he bought that summer amounted to a million & a half of pounds. At the time we got the genuine bill of lading of October 28th, on November 7th, we knew the last
197 draft on Goetz & Luening was not paid. The Trostel & Gallun draft was dated October 28th, for $1,100, as appears from the original draft now shown me. This (paper shown witness) is the bill of lading attached. The draft was not accepted; the bank discounted it; Du Bois got the money; the bank has never been paid. The draft of E. Ramsch & Son was dated Oct. 27, 1881, for 1,150. The bank took that from Du Bois on deposit, the same as other drafts. Du Bois got the money on that draft. It was endorsed:

"Pay First National Bank or order, for collection account of Bank of Kansas City.

"E. K. THORNTON, *Cashier.*"

It was not accepted. This is the bill of lading that came with it (referring to paper shown witness). We never received the money on it; it did not go on any pre-existing indebtedness of Du Bois. We continued to receive drafts from Du Bois, with bills of lading attached, up to October 28th. Possibly we took drafts on the 29th; I don't know. I first learned on Oct. 31st that Du Bois had absconded. On 28th Mac Lellan told me he [had] gone to Chicago.

(The bills of lading & drafts, referred to in this testimony, of
198 Trostel & Gallun, Cowan & Co., Ranch & Sons, and Hartman & Co. were here offered in evidence & marked Exhibit No. 2.)

I never knew we were stuck by the Boston transaction till we got the final account of sales, nor did I know till then there was anything wrong in the bills of lading in that transaction. I did not, to my knowledge, pass upon any of these bills of lading. I am not

familiar with the signature of the railroad agent. The matter is generally referred to Mr. Thornton. The business we had with Du Bois for that month of October amounted to about $30,000. I have not ascertained what it was, from the 11th of October to the last day.

Re-examined by plaintiffs' counsel, witness testified as follows:

Q. You did not trust Du Bois sufficiently to take his paper for any purpose except collection without security, did you?

A. I don't know that he ever asked us to. I have known of small drafts we have taken where we had account sales and there was a balance due him.

Q. With all the knowledge of the man and the circumstances before you which you had at that time, would you have taken
199 Du Bois' paper at that time without any collateral security & discounted it to any extent?

A. I think I might possibly have done it. I took this paper, all these acceptances, at that time, relying entirely and exclusively upon the shipment of the goods for which bills of lading were attached. Our bank account with Du Bois was balanced immediately after October 31st, so as to show nothing due from Du Bois, as follows: The Boston drafts had been credited to Du Bois' account, and were in our exchange account and did not appear in that account at that date, October, '81. He had credit for them. So far as his account showed on the books there was nothing relating to those drafts at that time. We held them in another account. I did not know, when the account of Du Bois was balanced at the end of October, that there was a large loss unsettled on the Boston matter. It was in August that the Boston drafts were protested, to which bills of lading were attached. I happened to be in Boston at that time, and I made it my business to inquire into that matter. The account had been transferred from one house in
200 Boston to another before I got there. We guaranteed the substituted firm the whole advance. We did not trust Du Bois at that time for making up the balance and deficiency, and called on Du Bois to bring in other securities, and he brought in Ewing, (I don't know whether he was his brother-in-law or not,) to indemnify us to the extent of ten per cent. on our loss or expected loss. When this was done in August, I did not know that those bills of lading, or some of them, were crooked & an imposition. I kept closly informed as to the business Du Bois did with me. I don't know as I went outside of that, as a rule, to post myself.

Q. Didn't you on Saturday, tell us you heard of Du Bois' Buffalo transaction in 1879, before the newspapers got hold of it?

Objected to. Objection sustained.

To which ruling plaintiffs duly excepted.

The Boston wool transaction appeared on our books as unsettled at close of 1881, because the drafts were drawn against the ship-

ments and cashed in Boston. We got the money, but we had
201 given the guaranty, & on the final wind up in Nov., I think, we repaid over $8,000 00.

Plaintiffs thereupon offered in evidence the deposition of W. E. BRIDGES, taken at Kansas City, on behalf of plaintiffs, in which deposition said witness testified as follows:

My name is William E. Bridges; residence, Kansas City; age, thirty-five years; business, local freight agent of the Chicago & Alton railroad. I was acquainted with J. N. Du Bois. In business realtions I have known him since first of June, 1880.

Witness was here shown the several bills of lading, in evidence in this case, purporting to be dated respectively Oct. 11th, 1881, Oct. 13th, 1881, Oct. 17th, 1881, Oct. 19th, 1881, and Oct. 24th, 1881, and then testified that the signature upon each of them, "W. E. Bridges, O. S.," is a forgery; that the letters "O. S.," written after witness' name, are for O. Smith, receiving clerk, who was authorized to sign witness' name, and that said signatures were not written either by said Smith or by witness in person.

Witness thereupon testified as follows:

My attention was first called to these papers by a telegram
202 from Goetz & Luening, of Milwaukee. I can't give the date when, but think it was 3 or 4 days before, somebody, I think a member of the firm, and an attorney, came here to inquire, with the papers in their possession. I dont recollect postively whether the papers were those shown me here.

Besides these forged bills of lading there were 3, 4, 5, or perhaps half a dozen forged bills of lading from the same party, which a Mr. Cowan, of Chicago, had. Cowan had just left town here when the Milwaukee party came in. There was also a St. Louis firm, Hartman & Co. or Hartman & Brother. I think that — had some forged bills of lading. I think they had two of them for wool; that was about a month or six weeks prior to the Goetz & Luening trouble. I can't tell what bank these Hartman & Co. bills of lading had gone through; I am under the impression, though, he did all his business with the Bank of Kansas City, but he might have done business with every bank in town, and I not have known of it. My impression is formed from what I have heard since the transaction. The first forgery that I saw was in the hands of Hartman & Co. or Hartman & Brother. One of the firm came up here & had the papers in his possession. I think that was about six weeks before this Goetz & Luening affair. After that came Cowan, and Cowan had just got out of town when Goetz & Sylvester arrived here
203 to investigate. About the Hartman & Co. difficulty we had considerable controversy over the wires, and finally they came up to see if shipments had really been made, and we found that the bills were forged. Du Bois then made a shipment of wool to them, for which I gave a bill of lading. Beside myself, Mr. H. H. Courtwright, general freight agent, and the boys about the station

knew about those forged bills of lading; also, Mr. O. Smith, who was purported to have signed these bills, knew of it. No efforts were made to keep the matter secret. No inquiries were made of me by any bank. These 5 or 6 forged bills issued to Cowan & Co. directly or their order. I can testify that they were forgeries. All of these forged bills of lading purported to be for shipments made by Joseph N. Du Bois. I reported all these forgeries to the general freight agent of my company. The last 2 months Du Bois was here he shipped a good deal of stuff—two or three shipments a week—hides & wool. He made shipments to Chicago, Boston, & several points in Massachusetts & New York.

Q. State whether or not inquiries were made by the mercantile agencies in reference to these transactions.

204 Objected to as irrelevant and incompetent on the trial. Objection sustained. To which ruling plaintiffs duly excepted.

Q. State whether or not these forged bills of lading were any surprise to you, or were you expecting something of the kind.

Objected to as irrelevant and incompetent on the trial. Objection sustained. To which ruling the plaintiffs duly excepted.

Cross-examined, the witness testified as follows:

When the St. Louis bills of lading were presented I could not understand it. I was pretty badly stirred up, and we searched the records from morning till night to see that there was no mistake in our office. I will not say that before that time I had heard nothing against Du Bois. I had heard of the Wabash transactions. After that Wabash transaction Du Bois was a prominent business man, doing a large business, and had been a large shipper of stuff over our road to points east & north & to St. Louis. I did not know Du Bois personally until after that Hartman affair. When stuff was delivered on our platform it would be checked off and signed for by our receiving clerk, Mr. Smith. Du Bois was represented by Mac Lellan, who always did the business, & was known by the
205 officers of the road as representing Du Bois. I do not recollect ever seeing Du Bois personally delivering goods. As far as I know, Mac Lellan had a good reputation. These bills of lading are in the usual form and similar to those issued by the other railroads at this place.

In the Hartman matter, when one of the parties came up here from St. Louis, Du Bois immediately fixed the matter up by making a genuine shipment of wool to them. I don't know as a matter of fact that Hartman retained the forged bill I saw in his possession. My impression is, I heard him say he was going to keep that for some purpose. I think he had it in his possession after the wool was shipped. Up to the time when the Goetz & Luening matter came out Du Bois made a great many genuine shipments. He was a large shipper. He shipped about 3 car-loads a week to various places. In regard to the Cowan matter, Cowan came here & had an

interview with me. He had those forged bills of lading & went over, also, to see Du Bois. A little after that various shipments were made by Du Bois to Cowan. Cowan was here probably 2 or 3 days.

Cowan was here some time in October. I don't think he was
206 out of town over 24 hours before the Milwaukee men came in.

All I know about Du Bois having settled with Cowan is they hustled hides over there, shipped them to Cowan, Chicago, and Cowan went away apparently satisfied. About three days, I should think, before Du Bois left I received a telegram from Goetz & Luening inquiring about certain shipments. I replied that no such shipments as those inquired about had been made over our road. Thereupon two gentlemen, one, I think, a member of the firm, came here in behalf of Goetz & Luening.

Plaintiffs thereupon offered in evidence the deposition of C. J. WHITE, taken at Kansas City, on their behalf, wherein said witness testified as follows:

My name is C. J. White; age, fifty-six years; residence, Kansas City; occupation, banking; have lived in Kansas City 18 years next April; am connected with the Bank of Commerce, formerly known as The Kansas City Savings Association. I knew J. N. Du Bois when he lived here, and 16 or 17 years before he went away. He kept his account at our bank a considerable length of time, commencing about 1876, until early in spring of 1881, when we discontinued doing business with him. My reasons for discontinu-
207 ing business with him were that his account gave us a great deal of trouble. His drafts would occasionally come back protested, and he hadn't means sufficient to take them up when returned. I heard of the difficulty he had with Buffalo parties, but don't know the particulars. It occurred through my bank. The drafts I sent on there were paid. There were bills of lading attached to them, to each of them. I did not know at that time that those bills of lading were forgeries.

Q. Do you remember of reading anything in the papers in relation to that transaction?

Objected to on the trial, because the papers themselves are the best evidence. Objection sustained. To which ruling the plaintiffs duly excepted.

Q. State briefly what was contained in those newspaper articles.

Objected to, because the papers themselves are the best evidence. Objection sustained. To which ruling the plaintiffs duly excepted.

Q. After that came out, was it not a matter of public notoriety and talk about town, that Du Bois had been guilty of crookedness?

Objected to on the trial. Objection sustained. To which ruling plaintiffs duly *accepted*.

208 Q. It was spoken of generally on the streets, was it not?

Objected to. Objection sustained. To which ruling the plaintiffs duly excepted.

[A.] I know John Mac Lellan. He was Du Bois' book-keeper.
Q. Do you know how he happened to be put in there?

Objected to. Objection sustained. To which ruling plaintiffs duly excepted.

[A.] The first time he (Mac Lellan) was put there by Smith, Fossett & Co.

The following questions and answers thereto, which were not objected to at the taking of said deposition, but which were for the first time objected [to] upon the trial, the court refused to allow plaintiffs' counsel to read to the jury upon the trial, to wit:

1 "Q. For what purpose?" (Meaning for what purpose was Mac Lelland put there by Smith, Fossett & Co.)
"A. To look after their interests, I was told; to look after the shipments and see that they were made correctly."
2 "Q. And he was put there another time you say?"
"A. He was still there, and I had an arrangement with Mr. Du Bois myself, after he was put there, that he was to sign all the drafts. I wouldn't pay Du Bois' drafts at all, but Mac Lellan was to
209 sign everything."
3 "Q. You told Du Bois you wouldn't pay his drafts?"
"A. Yes, sir."
4 "Q. Why was that?"
"A. Because I had no confidence in the man."
5 "Q. You did that for the protection of your bank and the public?"
"A. Yes, sir. I didn't know that the public had much to do with it. I did it for the benefit of our bank. The shippers generally got the money for theirs."
6 "Q. What was Du Bois' reputation during the last years he was here?"
"A. It was very bad."
7 "Q. Was he not notoriously slippery, considered so?"
"A. That was the general impression."
8 "Q. In your dealings with him, what precautions did you take?"
"A. I have just explained them; by having this man Mac Lellan sign all the drafts."

Plaintiffs' counsel duly excepted to the said ruling of the court separately as to each of said questions above numbered 1, 2, 3, 4, 5, 6, 7, & 8.

Q. Was it not generally known among business men that
210 Du Bois was considered crooked?

Objected to by defendant's counsel as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

I know Mr. J. S. Chick; have known him about 25 or 30 years.
Q. From your knowledge of the reputation of Du Bois, Mr. White, would you not consider it carelessness, gross carelessness, to deal with him as you would with an ordinary business man?

This was objected to for the first time on the trial. Objection sustained. To which ruling plaintiffs' counsel duly excepted.

Cross-examined, witness testified as follows:

I don't recollect when the Buffalo matter took place, but I think it must have been in 1879. He continued to do business with our bank until April, 1881. He did a very active business, drew a great many drafts. In all instances there were bills of lading. I wouldn't take them any other way. I relied entirely upon these bills of lading as security for us in getting payment of the drafts. I had no suspicion at any time that those bills of lading were forged. I don't know that I received some of those bills of lading until the
211 time he left. I had taken a few for collection. I wouldn't cash them. I took a few for collection before he left, and I think, perhaps, I took one for collection after he left, from Mac Lellan. Mac Lellan was a man who stood well in my judgment. When his signature was attached to a draft I had every reason to believe the transaction was a fair one; never saw anything to the contrary. When Mac Lellan came to our bank with a draft and bill of lading attached I believed the transaction was a fair one, and when I cashed the draft I thought I would — the money. I used to have him figure up the draft, what it would come to. Sometimes there was not as much put in as the bill of lading called for, and I would ask Mac Lellan how that happened that there was not as much in that bill of lading. Well, he says, Du Bois most always does everything of that kind himself. He says: I keep the books and do the best I can to see that everything goes in; but, he says, sometimes a bill of lading gets fixed up and I don't know anything about it. I would have this conversation with Mac Lellan to see that the shipment was sufficient to pay the draft.

Q. Previous to Du Bois leaving Kansas City you had taken
212 some of these drafts drawn by Mac Lellan, with bills of lading attached, & you had no suspicion that they were forgeries?

A. No, sir, I had not; there was one draft for a shipment sent to a town near Baltimore with a bill of lading attached for upwards of $2,000, which bill of lading was a forgery.

Q. When you received that draft with a bill of lading attached, drawn and brought to your bank by Mac Lellan, you didn't think it was gross carelessness to receive—you paid money on it?

A. At that time there had been a great many of these drafts coming back. I had learned that. I told him I wouldn't give him the money; would take it for collection & send it on, and if it was paid all right I would give him the money when I heard from it. He said they were needing the money badly & couldn't wait. I told him he couldn't get it from me. I told him to *that* hurry it up a little; I would have them telegraph when it was paid. I wrote on to them to that effect. I did so. They sent me exchange for it, and I paid the money over to Du Bois. I paid it to Mac Lellan. At that time
I had no suspicion the draft was a forgery. I wouldn't cash
213 it because I feared it was drawn for too much. If Mac Lellan brought drafts with bills of lading attached I had no sus-

picion or reason to believe the bills of lading were forgeries. After the Buffalo transaction Mac Lellan drew drafts with bills of lading attached for thousands of dollars. Those drafts were cashed by me. Du Bois got the money on them, and there was no difficulty about them.

Q. Did you, from your knowledge of Du Bois at that time suppose that he would be guilty of forgery?

A. I didn't have much faith in Du Bois.

Q. Still, however, you did take some of those drafts.

A. No, sir; I considered them Mac Lellan's drafts. Mac Lellan came from New York, is of fine reputation, so far as I know, and at that time, I think, was of good character.

Q. Du Bois was of a rather speculative turn, and you were afraid that he would draw for more money than the shipments authorized.

A. I hadn't much confidence in him. I thought he would do most anything.

Cross-examined:

Q. Would you not, from your knowledge of Du Bois and this Buffalo transaction and what you had heard about these forgeries, would you not deem it prudent to look into the genuineness of the bills of lading that came from him?

214 Objected to. Objection sustained. To which ruling plaintiffs duly excepted.

Thereupon plaintiffs offered in evidence the deposition of WILLIAM H. WINANTS, taken at Kansas City, on behalf of plaintiffs, wherein said witness testified as follows:

My name is William H. Winants; age, thirty-seven; residence, Kansas City, Missouri; am cashier of the Armour Bros. Banking Company; have lived in this city since 1865; have been acting cashier of that bank 2½ years. I have known Joseph N. Du Bois quite a number of years—almost ever since I came here. Du Bois made application to our bank to open an account at our bank. I think it was in 1881. That was after he had been doing business with the Kansas City Savings Association; can't say certainly how long it was before he left—along in the summer or in the spring of 1881. We did not take his account, for the reason that his reputation was such, and his dealings, that we didn't feel safe in doing it. His reputation at that time, so far as I am acquainted with it, was very bad in his business transactions. He made the application, stating that he was shipping hides and wool, and that he would attach bills of lading to his drafts and he wanted to do business in that way. I told him that on account of his past record that would be objectionable; that we would have to look up
215 every bill of lading; that the old gentleman was very particular about such things; and that looking all his bills of lading — would take too much time. I gave that as a reason for refusing his account. I don't remember specially the Buffalo transaction. I had heard of his transactions through the newspapers, and the

general talk throughout the town of his former forgeries of bills of lading.

Q. Would you, if Du Bois had presented you with a bill of lading in the year 1881. have advanced him money on it without first ascertaining its genuineness?

Objected to as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

Q. Would you consider it a business transaction, or would you not, to advance him money on a bill of lading without ascertaining its genuineness?

Objected to for same reason. Objection sustained. To which ruling plaintiffs duly excepted.

Du Bois also spoke to Mr. Armour afterwards, in our bank, about opening an account with Armour Brothers' Bank. He declined the account. After the newspaper exposures of his matters his forgeries were generally talked of by his friends and the public. I heard of these things from a great many different directions. It was generally known that he had been charged with these forgeries. .

Cross-examined, witness testified as follows:

216 Mr. A. W. Armour has been in banking business since September, 1878. Before that he was a farmer and a money-lender. I told Du Bois the old man was very particular. That was not an excuse for declining his account. I used those words to make it easy for him. I don't know why the old gentleman was so very particular. He is particular about everything, and has been all the time. I have talked with Mr. Sylvester, one of the attorneys for plaintiffs in this case, & told him what I thought would [be] my testimony in this case. When he called on me I told him, in substance, what I have testified to here. I know Mr. Chick. He has been in [the] banking business as far back as 1860—some twenty-odd years. He is regarded as a careful, prudent man, and, as far as I know, as a conservative man. I would think his judgment fully as good as mine. His experience has been large & more extended. I know Thornton, the cashier of that bank. I understand he is a careful man. His reputation is that he is a prudent man and a man of good judgment. I also know Mr. Slavens. He is one of the leading business men of the town, and, as far as I know, a careful, prudent business man. I was a member of the Craig Rifles, second sergeant, in 1881. Du Bois was captain up to that time. Du Bois was a prominent member of the common council of the city and took an active part. I had the pleasure of serving with him. He was also an active member of the board of trade. He had many warm
217 friends. I don't know that he had many enemies. He had some on account of family matters.

Thereupon plaintiffs offered in evidence the deposition of JAMES M. COBURN, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is James M. Coburn; age, thirty-three; residence, Kan-

sas City. I am in the cattle business. In 1881 I was cashier of the Merchants' National Bank. I had slight acquaintance with J. N. Du Bois. In 1881, before Du Bois opened an account with the Bank of Kansas City, he applied to our bank, while I was cashier, to open an account there. We did not accede to his request. My reason was that I had heard certain things, and I didn't suppose he would be a desirable customer.

Q. What had you heard about him?

Objected to as incompetent & irrelevant. Objection sustained. To which ruling plaintiffs duly excepted.

Q. How did you regard him?

Objected to as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

[A.] Mr. T. B. Bullene, present mayor of the city, came to our bank with Du Bois. Bullene was then a director in the Bank of Kansas City.

Q. If Mr. Du Bois had made application to you to cash a draft, accompanied by what purported to be a bill of lading, would
218 you have cashed it without first ascertaining the genuineness of the bill of lading?

A. I should not have cashed it at all. I should have had nothing to do with him, for the reason that I have just stated. I didn't propose to do business with him.

Cross-examined, witness testified as follows:

Mr. Bullene's name stands at the head of one of the largest establishments in the city, and is regarded as being a good business man, and was president of the board of trade when — went out of the banking business. I was in banking business from November, 1879, till July, 1880; was in banking business before that. I know the Bank of Kansas City. It is a safe conservative bank. I know Mr. Chick and know he had large experience in banking, and is a careful, prudent, conservative man. I have less acquaintance with Mr. Thornton than with Mr. Chick. His reputation is the same. I had no intimate personal acquaintance with Du Bois. I had simply heard these reports concerning him, but had no occasion to investigate whether they were true or not. I declined his business on the strength of what I had heard. Up to the time he came to me I had seen his checks on the Kansas City Savings Association, and immediately after I saw his checks on the Bank of Kansas City. I do not know positively whether at that time Bullene was a director in the Bank of Kansas City. It was my impression that
219 he was. I didn't know anything about Du Bois' social relations; didn't know much about him.

Thereupon plaintiffs offered in evidence the deposition of A. A. WHIPPLE, taken at Kansas City, on behalf of plaintiffs, wherein said witness testified as follows:

My name is A. A. Whipple; age, thirty years; occupation, cashier

of the Citizens' National Bank of Kansas City; residence, Kansas City; have liven in Kansas seven years. In spring of 1881 I was in banking & real estate business. The bank I was in was that of Whipple, Cowherd & Company. I was one of the partners. I know Du Bois. In 1881, in spring, Du Bois applied to our bank to open an account there. I told him ours was a small bank—we were devoting considerable time to real estate business, & that his account would have more exchange than we would want—that we preferred not to take his account. That was not our only reason for refusing his application. The other reason was I didn't consider him a desirable customer for a bank. I had heard of a crooked transaction with which he was connected. I refer to that which has been referred to as the Buffalo transaction. I saw an account of it in the papers. I heard of no other crookedness except
220 that I think that Buffalo transaction was generally known here on Delaware street. If Du Bois had applied to me for an advance of money on what purported to be a bill of lading, in 1881, I should have disliked to have advanced any money without first ascertaining its genuineness. In the year 1881, in view of Du Bois' reputation, I would have dealt with Du Bois in any other style of transaction as with any other business man; but in advancing money on bills of lading I would have disliked to have done so without knowing they were genuine.

Cross-examined, witness testified as follows:

If I had known Du Bois was a large shipper of hides & wool, & had been quite a time previous to his coming to the bank, that his drafts had been paid, that the shipments were genuine, I would not have hesitated to take a draft with a bill of lading attached, and also if I had learned from the officers of the bank with which he had been doing business previously that they knew nothing that was irregular in the so-called Buffalo transaction. Du Bois was an active man in business, did a large business in hides & wool, had made a great many drafts with bills of lading attached, was a member of our city council, one of its most active members, had been prominently
221 spoken of as candidate for mayor of the city, after the Buffalo transaction, and after that transaction a great many people believed he would make a good mayor. He was a director in the board of trade, a member of its arbitration committee, the committee to whom all classes of disputes arising among members of the board of trade are referred. He was a captain of the Craig Rifles, a prominent military & social organization, stood high in society, in the estimation of many people, up to the time he left. On December 2, 1880, he attended my wedding reception, & made a very handsome present.

Thereupon plaintiffs offered in evidence, the deposition of JAMES A. MANN, taken at Kansas City, on behalf of plaintiffs, wherein said witness testified as follows:

My name is James A. Mann; residence, Kansas City; age, forty-six years; business, secretary of the Journal Company. The Journal

is a newspaper, published in Kansas City daily, weekly & tri-weekly; have lived in Kansas City 16 years, & been connected with the Journal 12 years. I made the acquaintance of J. N. Du Bois about 1867, & knew him from that time till he left. In 1879 our
222 paper published an article purporting to give a transaction of Du Bois in reference to a shipment of hides. I have the files of the Journal containing that article here with me.

Here plaintiffs' counsel offered in evidence a paper writing, which was, by said witness, in his said deposition, proven to be a copy of the said article published in said Journal August 24, 1879, in which article said J. N. Du Bois was accused of having procured drafts to the amount of $22,000, drawn on Hoeffeld & Geissner, Buffalo, with forged bills of lading attached, purporting to be for shipments made by him of hides, to be cashed at Kansas City, for which see exhibits hereto attached, marked "A."

This was objected to as incompetent and not tending to prove the issues raised in the pleadings. Objection sustained. To which ruling plaintiffs duly excepted.

Our paper then had a large and general circulation throughout the city. This matter was one of general notoriety throughout the city. It was something of a sensation. After that article came out Du Bois, in his business dealings, was regarded as slippery. He kept on in business—did a large business—but was regarded slippery. He was reckless.

Q. When this last forgery came out that caused Du Bois to leave, were you surprised?

223 Objected to as incompetent & irrelevant. Objection sustained.

To which ruling plaintiffs duly excepted.

Cross-examined, witness testified as follows:

Mr. Du Bois was a very energetic man, of considerable influence; was an influential member of the city council, & was engaged in the purchase of wool & hides.

Q. From your knowledge of him at that time & his transactions after that did you suppose he would deliberately come to a bank with forged bills of lading & attempt to get money on them, or did you suppose he was speculating & inclined to overreach himself?

A. I would say this: From my knowledge of the man, my acquaintance with him, that I believed he was unscrupulous when he got into a tight place. He would do what an ordinarily careful man would not do. If he was successful it was all right. If he was unsuccessful I believed he would be unscrupulous if he got into a tight place. Some men believed his explanation of that Buffalo matter, and I know that many doubted it. He had a great many friends up to the time he left. He had a peculiar faculty of making
224 friends. Honesty and integrity apart, his business capacity was never doubted. His energy was remarkable. I know

of the Citizens' National Bank of Kansas City; residence, Kansas City; have liven in Kansas seven years. In spring of 1881 I was in banking & real estate business. The bank I was in was that of Whipple, Cowherd & Company. I was one of the partners. I know Du Bois. In 1881, in spring, Du Bois applied to our bank to open an account there. I told him ours was a small bank—we were devoting considerable time to real estate business, & that his account would have more exchange than we would want—that we preferred not to take his account. That was not our only reason for refusing his application. The other reason was I didn't consider him a desirable customer for a bank. I had heard of a crooked transaction with which he was connected. I refer to that which has been referred to as the Buffalo transaction. I saw an account of it in the papers. I heard of no other crookedness except
220 that I think that Buffalo transaction was generally known here on Delaware street. If Du Bois had applied to me for an advance of money on what purported to be a bill of lading, in 1881, I should have disliked to have advanced any money without first ascertaining its genuineness. In the year 1881, in view of Du Bois' reputation, I would have dealt with Du Bois in any other style of transaction as with any other business man; but in advancing money on bills of lading I would have disliked to have done so without knowing they were genuine.

Cross-examined, witness testified as follows:

If I had known Du Bois was a large shipper of hides & wool, & had been quite a time previous to his coming to the bank, that his drafts had been paid, that the shipments were genuine, I would not have hesitated to take a draft with a bill of lading attached, and also if I had learned from the officers of the bank with which he had been doing business previously that they knew nothing that was irregular in the so-called Buffalo transaction. Du Bois was an active man in business, did a large business in hides & wool, had made a great many drafts with bills of lading attached, was a member of our city council, one of its most active members, had been prominently
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Q. From your knowledge of him at that time & his transactions after that did you suppose he would deliberately come to a bank with forged bills of lading & attempt to get money on them, or did you suppose he was speculating & inclined to overreach himself?

A. I would say this: From my knowledge of the man, my acquaintance with him, that I believed he was unscrupulous when he got into a tight place. He would do what an ordinarily careful man would not do. If he was successful it was all right. If he was unsuccessful I believed he would be unscrupulous if he got into a tight place. Some men believed his explanation of that Buffalo matter, and I know that many doubted it. He had a great many friends up to the time he left. He had a peculiar faculty of making
224 friends. Honesty and integrity apart, his business capacity was never doubted. His energy was remarkable. I know

J. W. L. Slavens. He is a very careful, cautious business man. He has had a large business in the beef & pork packing business.

The plaintiffs thereupon offered in evidence, the deposition of Dr. MORRISON MUMFORD, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is Morrison Mumford; am of lawful age; my residence is Kansas City; occupation, manager of the Kansas City Times Company; have lived at Kansas City since 1869; have been business manager of the Kansas City Times since August, 1871. In August, 1879, our paper published several articles in relation to J. N. Du Bois. I have here with me the files of the paper containing said articles.

Here plaintiffs' counsel offered in evidence a paper writing which was by said witness in his said deposition proven to be a copy of an article published in the said Kansas City Times on the 23d day of August, 1879, in which article it was represented in substance that that a well-known business man of Kansas City had appeared at a prominent bank with bills of lading from one of the railroads,
225 stating that he had shipped grain to an eastern city, to the cash value of $22,000, which bills of lading were afterwards discovered to be forgeries; and, in connection with said offer, plaintiffs' counsel also offered in evidence a further paper writing, which was proven by said witness in his said deposition to be a copy of a "card" published by said J. N. Du Bois in said Kansas City Times, explaining the subject-matter of the aforesaid article, and further, in connection with said offer, the plaintiffs' counsel also offered in evidence another paper writing, which was proven by said witness in his said deposition to be a copy of an article published in said Kansas City Times, August 24th, 1879, wherein the said article of August 23, 1879, was repeated, and the assertion was made that the person therein alluded to as having presented at said bank forged bills of lading was the said J. N. Du Bois. For all of which see exhibits hereto attached, marked "I," "J."

All of which said several offers were objected to as incompetent and irrelevant. The objection was sustained. To which ruling the plaintiffs duly excepted.

The further testimony as read from said deposition was as follows:

226 Our paper at that time had a large and general circulation in the city. That article created considerable of a sensation and talk. That is my recollection. Since that occurrence in 1879 I have heard unfavorable comments about Du Bois. A great many said they knew he was slippery, or words to that effect.

Q. Were you surprised to learn of his departure for good?

Objected to as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

Cross-examined, witness testified as follows:

I know Mr. Chick & Mr. Thornton, of the Bank of Kansas City.

Their reputation as to careful & prudent bankers is as good as that of any in the community. That is also the reputation of the bank.

On motion of defendant's counsel the following questions and answers thereto, appearing in said cross-examination in said deposition, were excluded:

"Q. Now, Doctor, going back to '79, to this Buffalo matter, I will get you to state if after that it didn't blow over apparently, and if Du Bois didn't go on with business as he had done before?

"A. I believe it did.

227 "Q. And some contended it was a forgery and others contended it was a mistake and that there was no forgery in the matter?

"A. It was talked of. We were surprised when he published his card, in which he agreed to pay up every dollar he owed anybody. He said that he was ready to pay them.

"Q. And no contradiction ever appeared to that, did there?

"A. Not that I recollect of."

To which ruling the plaintiffs duly excepted as to each of said questions and answers separately.

Du Bois was regarded as a very energetic business man, and was one of the most active members of our city council. He was the alderman from the ward I lived in & lived in the same block. He & his family moved in the best society. He was a member of the board of trade, and continued in his position after that Buffalo transaction & went right along with his business as before.

Thereupon, on motion of defendant's counsel, the following questions & answers, appearing in the cross-examination in said deposition, were excluded:

"Q. Of these statements as published in your paper you had no personal knowledge?

228 "A. Well, yes; I did. I supervised all the statements.

"Q. I mean it only came before you as hearsay?

"A. I just got them as I do all news, from the city editor. They were all submitted to me.

"Q. You had no positive knowledge as to the truth or falsity of the statements?"

"A. Not at all, except as I learned it outside."

To which ruling the plaintiffs duly excepted as to each of said questions and answers separately.

Thereupon plaintiffs offered in evidence the deposition of ALBERT MARTY, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is Albert Marty; am in the real estate business; am thirty years of age, and have resided in Kansas City seventeen years; have been in real estate business seven years. I knew J. N. Du Bois fourteen years before he left Kansas City. I remember reading an article in the newspapers in 1879 concerning Du Bois. I know there

were several accounts in the papers. It was claimed that he had drawn drafts through the Kansas City Savings Association, that he had forged the drafts, or that the drafts were drawn with forged
229 bills of lading attached to them. I suppose that was generally known through the city. I think it was a matter of general comment through the city. Du Bois was quite a prominent man here at that time. He was generally considered a rather smart sharp business man. His reputation as to honesty and scrupulousness I don't think was regarded as very good. I speak only of what was known personally to me. I think he was regarded throughout the city as being slippery and unscrupulous. If Du Bois had applied to me to advance money upon bills of lading, I don't know whether I should have done so without ascertaining their genuineness. I should probably have endeavored to have found out something about their genuineness, I think.

Q. Would you regard it prudent to deal with a man of his reputation, as you would with an ordinary business man?

A. I wouldn't have taken his word for anything.

Q. Were you surprised when you learned of these last forgeries, that induced him to leave?

Objected to as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

Cross-examined, witness testified as follows:

230 Du Bois was member of city government; active & influential member of city council; very prominent in business circles; member of board of trade & of committee of arbitration, a committee that settles all disputes, grain disputes; also captain of a military company, which represented the best element of the young men of Kansas City, the business young men. I presume while some would say he was crooked others would say he was perfectly honest & straight; if they didn't know anything about him they would consider him as a straight man, probably. I knew more than a good many others, because I was intimate with parties that he had been—. I know he did an immense business in hides. He dealt in hides, wool, & tallow.

Thereupon plaintiffs offered in evidence the deposition of GEORGE MARSH, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is George Marsh; age, forty-one years; residence, Wyandotte, Kansas; occupation, freight agent of the Wabash, St. Louis and Pacific road. Have been such agent here at Kansas City since four years ago last April. I know J. N. Du Bois ever since about the time I came here. He was an extensive shipper.
231 At times he shipped a good deal over our road.

Q. Did Du Bois ever forge any bills of lading purporting to have been issued by your road?

A. I saw several bills that had my name signed to them. I had not signed or authorized anybody to sign them for me. I think

one time was in May, 1879. I believe I have been shown three or four of those bills. The first I remember was, I think, in May, '79. Maybe a month or two after that I saw another. I remember of hearing of these Buffalo forgeries that occurred in August '79. Those bills of lading purported to have been issued by our company by myself. They were not issued by me. There were several of those bills; don't remember how many. They were shown me by Mr. Geisler. He brought them to me. That was in August, 1879. It was published in the Times & Journal. As I remember it, the first day there was considerable said about it, about the board of trade building, in the halls. That was the day before it came out in the papers. It seemed to be generally known around there, and it was published in the paper the next morning. With a certain class of men that were speculating & knew Du Bois well there was a good deal of talk & comment about it. Occasionally
232 a man would call out to me & ask me whether I had signed any bills of lading. I read those articles. I reported those frauds to the company. I did that particular case. The newspaper reporters came to me and asked me about it.

Q. You gave them a statement, did you not?

A. Yes, sir; when they put it to me I admitted that the charges were true.

Q. Were you surprised that he skipped out?

Objected to as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

As to Du Bois' reputation the last two years here, as far as I know, they looked upon him as a little slippery. I know I regarded him so. There was not much said about it the last year or two. It kind of died out, and I didn't pay much attention to him the last year. If I had been dealing in or handling bills of lading & he had asked me to advance money upon them, I wouldn't have done it unless I had known there were genuine signatures to the bills of lading.

Cross-examined, witness testified as follows:

I wouldn't have advanced him any money on bills of lading without knowing the signatures were genuine. That was from my knowing the man, and it arose from the forged bills of lading having been made on me.

233 Q. A person not knowing these facts, with Du Bois' qualifications, wouldn't take such a course, would they, in your opinion?

A. I don't know. The banks here are different about that. Some of them have always wanted to know the agent's signature & know it was authorized. That has been so the last two or three years. I know that two years ago, when the Merchants' National Bank was started, it was talked about—wanting to know who signed the bills of lading. That was a new bank started then. The old banks hadn't done it, I believe, except on checks. The Buffalo matter was talked of about the Exchange building & on the street. About the time that occurred I was much on the street, up about the board of

trade. There was a time I was up town every day. I am a member of the board of trade. I didn't make any charge against Du Bois as a member of the board of trade. I knew he was a director & an officer of the board of trade. I knew by hearsay that he was a very large speculator. I knew he was an active business man, & that he speculated; don't know how much he was up there. I knew he was captain of a company here that was quite a society
234 company, composed of the better class of business young men of the city. He moved in the best society; his name was in the Sunday paper very often. In his line he did a very large business. I guess he was a man who spent money freely, & think calculated to make friends. I liked him up to the time that Buffalo matter came out. I wouldn't go out of my way to say anything about it, because I was not damaged; wouldn't have said much about it, on account of Du Bois moving in the place he did, without I was driven to it. I never had any talk with the officers of the Bank of Kansas City about it.

Thereupon the plaintiffs offered in evidence the deposition of BENJAMIN MCLEAN, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is Ben. McLean; age, fifty-four in January, I believe; residence, Kansas City; occupation, hide & wool dealer; lived in Kansas City 17 years; knew Du Bois about the same time. The reputation of Du Bois the last two years he was here I call bad. Of course, I knew him well. I heard of the Buffalo forgeries in '79; saw the bills of lading that were claimed to be forgeries; there were eight of them, I think. I remember the newspaper articles
235 published in connection with it. It was generally talked about through the city by the people that knew him, and was generally known among the business community. The last two years, since those publications came out, he was regarded in his business transactions among my acquaintances as those drafts & bills of lading purported—as a forger. I don't know whether I would deem it safe for a prudent business man to deal with him as he would with people in general, the last two years he was here. I would deem it necessary to use precautions in dealing with him. If Du Bois had presented a bill of lading to me and asked for an advance of money upon it, I wouldn't have advanced the money upon it without ascertaining its genuineness.

Q. Most, or in fact all, of these forgeries must have been known by every one who reads the papers, and were in circulation among the business community?

A. I think all the people knew it. I do a large business; it is more than a million of dollars a year.

Cross-examined, witness testified as follows:

Probably, in regard to that Buffalo matter, my means of in-
236 formation were better than those possessed by any other citizen, except one or two in the city. In regard to circulating the information I had about that matter I had a delicacy. While I

fully believed it & knew it to be true, I had a delicacy about circulating it on account of being in the same business. I spoke of it only to my friends & intimate acquaintances in my circle. I heard a great many people talk about it. They came and asked me about [it]. They were among the leading business men of the town. Fifty would cover it. Every man I met wanted to talk about it to me, and I got tired of it & didn't want to talk about it, & avoided it. After that Buffalo transaction Du Bois continued to do a very large business in Kansas City. By means of guarantees & things of that kind he did business with some of the best commission houses in the East. I have that from the bank, & the one he shipped to; I have it from Church White's bank. White is regarded as one of the most conservative bankers in the city. Du Bois did business quite largely with him, up to & long after the Buffalo transaction. I know Mr. Chick. He is one of the oldest bankers in the country. I know his bank. It does a large business & has the reputation of being a conservative careful bank. I know the reputation
237 of the cashier of that bank to be also good. I wouldn't have cashed a draft for Du Bois with a bill of lading attached without inquiring into the genuineness of the bill of lading, from the fact that my means of knowing all his transactions were better than those of almost any other citizen, and had known him ever since he had been here. I am not in the banking business anyhow. If anybody had presented me with a bill of lading with a draft attached I would have thought it was outside of my business, & would have inquired into it if anybody had done it.

Thereupon plaintiffs offered in evidence, the deposition of JOHN MAC LELLAN, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My age is forty-four; residence, Kansas City; occupation, bookkeeper. I have lived in Kansas City three years past; came here September 15, 1879. I knew J. N. Du Bois; was in his employ. I entered his employ on the day I came here, rather the 16th of September, '79; the 15th was Sunday. I was in his employ at the time he left.

Q. State briefly how you came to be placed in connection with Du Bois?

238 A. On September 12th, 1879, I was in the office of J. B. Hoyt & Co., of New York city. There was a commission firm, Smith, Fossett & Co., keeping their accounts there, who were doing a large busine with Du Bois. J. B. Hoyt & Co. had found frequent fault with the manner in which shipments were coming in, on which drafts had been made for them on account of Smith, Fossett & Co. There was so much confusion in the shipments from Du Bois that they said they would have to stop doing business with him. There was nothing said about shortages. There was so much confusion in the shipments that, unless Du Bois got some one who understood shipping goods to take charge of that part of the business, they would discontinue doing business with Smith, Fossett & Co., or that firm would have to discontinue doing business with Du

Bois, and Smith, Fossett & Co. notified Du Bois of that determination, and he said he would employ anybody they would recommend. They recommended me, and I came under those circumstances. I received no further instructions from Smith, Fossett & Co. than merely to keep things straight in the shipping department of Du Bois' business. When I first came here I attended to the shipments, wrote out the bills of lading, and saw they were sent. In 1881 Du
239 Bois took the outside department, and I took the inside, took care of the bank account and books—in fact, all the inside office work. I went to the bank all the time; didn't have independent charge of bank account; was under his direction. I took charge of it [the] same as any book-keeper would. I remember the bills of lading attached to drafts drawn on plaintiffs. My connection with them was simply to take them to the bank & put them on deposit to the credit of Du Bois. I generally took them to the bank. It was the rule. Sometimes Du Bois himself did. Sometimes I took bills of lading to bank & wanted to deposit amount of drafts attached. Thornton, cashier, would refuse to take it. Then I would return to Du Bois & tell him, & he would go himself to see Thornton & make the deposit himself. That happened comparitively often. It happened probably 20 or 30 times in the summer of '81, in June, July, & August.

Q. Thornton would object?

A. Yes, sir. He wouldn't take them; wouldn't have anything to do with them. The reasons given by Thornton were generally that other drafts taken previously had been returned dishonored. Sometimes they would have notice of this from banks in Boston
240 & other places. He knew drafts were coming back & didn't want any more drafts on those parties till the first ones were paid. In such cases Du Bois would come up himself and arrange matters. Thornton made no special complaints, only he said these drafts were always coming back, & they didn't want to do business in that way.

Q. Did he complain of shortages in anything?

A. No, not at that time; well probably that time covered them, I suppose. He first commenced to complain of shortages in relation to the shipment that was made to Brown, Sicese & Clark, of Boston. That was probably in August; couldn't say for certain. That was the twenty-seven thousand dollars shipment. That was the amount of the drafts altogether. The drafts were for wool shipped to those parties. A. H. Colt, of Boston, succeeded in getting Grey, Dewey & Gould to take up those drafts that were lying in the bank at Boston if the Bank of Kansas City would guarantee to Grey, Dewey & Gould that the shipments on which these bills of lading had been drawn would prove to be what they represented and all right, and the Bank of Kansas City agreed to do this on the understand-
241 ing that they were going to be indemnified in some other way by Du Bois. When the wool began to arrive at Boston Grey, Dewey & Gould were the first parties to report to the Bank of Kansas City that the wool failed to come up to the amount marked on the bags or the amount of weight of the invoices.

Q. Then Mr. Thornton began to complain?

A. He complained before that, and of course they disliked the matter more on that account. The only indemnity given the defendant bank was by W. N. Ewing, a private friend of Du Bois. He became security for ten per cent. of the total amount of drafts lying in the bank at Boston. Latterly Du Bois did the corresponding principally. Formerly I did nearly all of it. Probably for the last six months he wrote every letter himself and made no copies of them. I wrote some letters, but the bulk of the correspondence was conducted by him. The letter shown me, dated Oct. 17, 1881, at Kansas City, directed to Goetz & Luening, signed "J. N. Du Bois, J. M.," to the effect that Du Bois had that day made a third shipment to plaintiffs of 450 U. S. hides, as per invoice of date, value,
242 $3,066.01, against which he had made sight draft of $2,000 on them through Bank of Kansas City, I wrote under Du Bois' direction. All these letters that are here, written by me, were written by his direction. He told me to write in these terms, which I did. The facts stated were not within my knowledge.

Q. Whenever you took a bill of lading to a bank with a draft attached, did you fill out the bill of lading & have it signed?

A. I used to do that when I first went there; the latter part of the time Du Bois did all that. He wrote most of them when he was doing business with the Bank of Kansas City. I may have written a few. All these bills of lading that went to Goetz & Luening were written by Du Bois himself. Du Bois gave the bills of lading signed, & told me to take them to the bank, as usual. When I computed the invoice I made drafts for the amount of the bill of lading & went to the bank. The bank never made any inquiries as to genuineness of bills of lading when I deposited them. They took the drafts & put them on Du Bois' account until there was so many protests & the drafts were returned. There was never anything said about the bills of lading. Du Bois' bank account was not the
243 hundredth part cash; it was principally all drafts. When we opened an account there the bank received drafts on deposit without bills of lading, until they began to come back. They continued to do it after that, up to the close, under protest. They objected, but still they did it. They would sometimes ask me, "Are you sure this draft will be paid?" I said, "I can't be sure about anything, but I don't know any reason why it should not be paid." When the drafts were coming back they would say they didn't want to take drafts unless they knew they would be paid. They were willing to take them on collection. That did not suit Du Bois.

I first learned of Du Bois' forgeries about the beginning of November, last year, from the papers, about ten days after he went away. Before that there were rumors of frauds, which I heard same as other people—perhaps I heard less than other people. I had heard of some transaction with Cowan, of Chicago, and Hartman, of St. Louis. That was a few days before the Goetz & Luening matter came out—probably a week before that—I am not certain as to the number of days. I had no conversation about this with
244 the officers of the bank. When Cowan went home he said

everything was all right. When he left he said I should continue to run the business the same as if he was home. He said he was going to Chicago about the Cowan matter, & I would hear from him Tuesday. He went on Friday night. He said if he didn't get matters fixed right in Chicago he would probably go on to see Coyt in Boston, but would not be gone more than ten days. When he left there was very little, if any, property on hand. Before he went away everything was shipped out just as fast as it came in. All that was left was a few little shipments of hides that came in & had been bought before he left. I shipped them out same as he had been doing. A genuine shipment to Goetz & Luening went out on the 28th or 29th. A genuine bill of lading was issued on that shipment, & sent up to Carl Spengler's for Albrecht. It was returned with remark on outside of envelope that Albrecht had left before it got there. I took it afterwards to the bank. I had it in my possession a couple of days. I had no instruction from Du Bois in reference to this bill of lading, beyond his general instructions. If a draft had been returned to the bank Du Bois would make it
245 good by another bill of lading, when we had one. We didn't always have it, & then Du Bois would make some other temporary arrangement. The Trostel & Gallun drafts had come back protested, & I took this bill of lading to the bank for that reason.

I don't know where Du Bois is; have not received any letter from him. I have not had any conversation with Mr. Chick about this matter, nor with any of the officers of the bank.

Cross-examined, witness testified as follows:

I have not talked about this matter, either with Mr. Chick or any attorney of the bank. I have talked with Sylvester about it—about an hour, at St. James Hotel. I called there at his request, because I had no reason to object & nothing to conceal. I am now invoice clerk at the office of Fowler Bros.' packing-house. I was with Du Bois from Sept. 16, 1879, till about 10 days after he left—until the developments came out. I never heard anything about these forgeries until after he left; have no actual knowledge now of any forgery that he committed. During all that time I believed everything to be perfectly straight. If I hadn't believed so I
246 wouldn't have presented the bills of lading & made the drafts.

I believe I was in a better position than any one else to observe him. In all the transactions of the bank with me they were so very careful that I wouldn't do business with them, & Du Bois would have to [do] the business personally. I never tried to persuade them. If there was any objection I went back & reported it to Du Bois, & he went himself & settled the matter. During the summer this may have have happened 20 or 30 times.

Q. It was compa-tively few that came back?

A. A great many came back. That was the 20 or 30 times that I spoke of, and I would have to call Du Bois in to get the matter fixed.

Q. There was nothing about that to excite your suspicions, and it did not?

A. No, I knew there was a general impression against Du Bois, but I thought it sprang from the mercantile agencies, who had taken away his rating. Du Bois was the smartest business man I ever knew. He was doing a very large business, and jealousy was the cause of a good deal of the talk against him, and I think a good deal of it arose from certain publications in the newspapers before
247 I came here. I know nothing about them; never saw a file of the papers; only heard incidentally about it before I left New York; was told an excitable Dutchman had come down here from Buffalo & investigated matters, but had gone away perfectly satisfied. They were aware of these publications that had been made, but assured me that there was nothing wrong. If I had thought there was anything crooked about him I wouldn't have connected myself with him. Latterly I wanted to get out of his employ, because I didn't like to be going to the bank with drafts & have them refused. When I took the last bill of lading to the bank, that was following the precedent that had been established. When Cowan, of Chicago, was here, before he left he told *you* everything was all right. I was very friendly with him before he left. I had no talk with the officers of the bank about that matter; don't know that any of them knew Cowan was here. Hartman, of St. Louis, was the other party that was here. He went away perfectly satisfied. I don't think any of the bank officers saw him. As to the drafts exhibited here, I usually took them up to the bank in the first
248 instance. He might have carried them back because they had been refused. In these matter- the bank seemed to be very cautious.

Re-examined by plaintiffs' counsel, witness testified as follows:

Q. What request, if any, did Mr. White, of [the] Kansas City Savings Association, make with you?

A. He made no request at all.

Q. What arrangement did he make?

A. The arrangement was made by Du Bois and other parties that I was to sign all the checks & drafts & documents that were sent through the office. That arrangement was made 2 or 3 weeks after I came here.

Q. Why was it made?

A. The reason Mr. White gave me was that Du Bois had been doing a good deal of bucket-shop business, dealing in grain, & he thought Du Bois couldn't control himself in that respect, & he (White) refused to keep Du Bois' account at all unless he would make some arrangement of that kind. Consequently I signed all the checks & all the drafts, so that, if he wanted to do anything outside of his business, he wouldn't have the money to do it with.

Thereupon the plaintiffs offered in evidence the deposi-
249 tion of FREDERICK C. SCHROEDER, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is Fred. C. Schroeder; age, forty-five; residence, Kansas City; occupation, commission merchant; have lived in Kansas

City nearly six years. I knew J. N. Du Bois, more or less, all the time I have been here. I heard of his troub'e with Buffalo parties in 1879. I read the newspaper accounts of it. It was [a] matter of general comment. I cashed a bill of lading for him to the extent of $2,500, which was returned on my hands, & I had to collect it from him in small installments. That was subsequent to his Buffalo escapade. I can't give the date; Du Bois' reputation as to business dealings was that he was straight as far as he could possibly make it, still he would not be above taking an advantage if he found a way to take an advantage. That exposure in the papers was generally talked about at the time here. A good many men ought to know it.

Cross-examined, witness testified as follows:

I saw & read the account in the paper of the Buffalo transaction & knew Du Bois. It may have been 2, 3, or 4 months after
250 that that I advance- him money on a bill of lading. I consider myself a pretty careful, prudent business man. Du Bois did considerable business with me dealing in grain. I was selling options at that time. Immediately after the Buffalo matter came out everybody believed it. In about 3 or 4 months it had died out. I saw his card published denying it. No denial of that card was ever published that I saw.

Q. You yourself went on doing business with him, you say, and at the time you took this bill of lading you made no inquiries, did you?

A. I made some slight inquiry. I didn't go to the man who issued and signed the bill of lading. I don't know of my own knowledge whether that bill of lading was a forgery. I know the Bank of Kansas City and always found it to be a very conservative institution. I have done business with it and know Mr. Chick and Mr. Thornton personally. They are considered careful, prudent, painstaking bankers, and have a very fine reputation for integrity and everything of that kind. Du Bois and I were both members of the board of trade. I did not report this matter, in regard to the bill of lading, to the board. He was one of its officers and on the committee of arbitration, a very active member of that committee, before whom all the disputes of members of the board of trade come, and remained a member of that committee up to
251 the time he left. The committee is composed of the bankers and leading merchants of Kansas City. It is the most important committee of the board.

Thereupon the plaintiffs offered in evidence the deposition of CARL SPENGLER, taken at Kansas City, on behalf of plaintiffs, wherein witness testified as follows:

My name is Carl Spengler; am thirty-seven years old; reside in Kansas City; my occupation is wholesale merchant; have lived here nearly twelve years; knew J. N. Du Bois ever since I *am* been here. As to his reputation, the first I ever heard about him was when he went out of partnership with Askew. It was told on the street that

he was taking hides from the stock; that he was there before they came, and then he delivered them over to them, and claimed he had paid cash for them. There *was* a good many people talking about Du Bois at different times. At the time of the Buffalo transaction I was a traveling man and was out of town, and didn't hear of it at the time. I heard of it afterwards, and read of it in the Times when this last trouble with Du Bois came out. His reputation was that he was slippery. I wouldn't have sold him any goods on credit, because I had heard all these stories about him. I wouldn't have considered him good enough on a time contract. I didn't consider
252 him straight. If I have a customer and hear stories about his speculating too much outside, in another line, of course I wouldn't sell him any goods on credit. If Du Bois had presented me what purported to be a bill of lading, and wanted to raise money on it, I would not have advanced him money on it without knowing it to be genuine.

Q. Were you at all surprised when you learned that Du Bois had skipped out last fall?

Objected to as incompetent. Objection sustained. To which ruling plaintiffs duly excepted.

Cross-examined, witness testified as follows:

I know the plaintiffs. They are not related to me; have known one of them six or eight years. I got acquainted with him here. I know Mr. Sylvester, their attorney. He had a card of introduction to me from Mr. Luening. I don't know that I ever had any business transaction with Du Bois. Am wholesale liquor merchant. Never was connected with a bank as cashier or president. I use bills of lading once in a while; never advanced money on them for others; have gone to a bank with my drafts with bills of lading attached, and drawn money on them, but never discounted them for others. I am [a] member of the board of trade; don't remember whether Du Bois was a member or an officer of the board of trade;
253 don't know anything about the amount of business he did, nor about his having many friends. He ran for alderman in my ward, & I suppose was elected. He went there. I knew him personally. He used to go and take a drink same as everybody. I didn't think that would have hurt his reputation if he had done nothing else.

Thereupon plaintiffs offered in evidence the deposition of J. W. L. Slavens, taken at Kansas City, on part of defendant, wherein witness testified as follows:

My name is J. W. L. Slavens; age, 44; am in the packing and provision business in Kentucky; have resided here since fall of '65; am stockholder and director in the Bank of Kansas City since its organization; was acquainted with Joseph N. Du Bois. I think he was here when I came here, and the firm was then in existence. It was Askew, Du Bois & Co. I knew him from that time till he left. In spring, summer and fall of '81 his business was dealing in

hides, wool, tallow and pelts. In the fall of '81 I introduced him to the officers of the Bank of Kansas City. That month, and several months previous, we were selling him our hides. We usually contracted them by the month. At that time he told me he was
254 going to change his bank account to either Armour's or the Bank of Kansas City; that his bank was charging him about double exchange on all his drafts, and he wouldn't stand it longer. I told him I was just then going to the Bank of Kansas City. He rode with me to the bank. On the way he told me he didn't want to borrow any money; his business was principally exchange business, cashing drafts on hides and wool that he took in and shipped right out again. That was the way he handled our hides. I introduced him to both Thornton and Chick and opened the matter. He was there to talk for himself. I told Thornton that Du Bois had said to me he was going to change to another bank, and I would like to have him do business there; that he was a very active business man, doing large business in hides and wool; that he had said he didn't want to borrow any money, and I thought that was a good kind of customer to have.

Q. What information had you then of Du Bois' business standing and character in this community?

A. Our business dealings with him had always been cash. He received the hides and gave his checks, which were always paid promptly. I understand him to be an active, pushing business man; knew nothing of extent of his capital, but believed it was $25,000 to $30,000. The only thing I knew against him was his wheat
255 speculations in Chicago. Then I introduced him to the bank officers. I stated he was a customers of ours, buying our hides. His transactions with us amounted to $25,000 to $30,000 a month. He used to be in our office every day looking at the ticker there, getting quotations of Chicago markets. I did not at the time regard his speculations dishonorable or disreputable, but it may have been that kind of business that led to his downfall. When I introduced him to the bank I didn't believe he would be an unsafe customer, unless it was to borrow money. I never dreamed he would be unsafe in a dishonest way, committing forgery or anything of that kind; otherwise I wouldn't have done business with him myself, nor introduced him to anybody else to do business with. At that time I knew nothing of any dishonorable business transaction he had been engaged in. I knew only of his wheat speculations, and didn't consider that dishonorable. Before introducing him to the bank I had done business with him five years, since he dissolved with Askew, Du Bois & Co. After the introduction to the bank, I continued dealing with him till he quit business. There were then just two hides he had gotten that were not paid for. He usually got hides in morning, and paid for them in afternoon. I had confidence
256 in his integrity to the extent that he would not give us a check that was fraudulent or anything of that kind. He knew we were doing a strictly cash business. When I introduced him to the bank I did it in good faith to promote the interests of

the bank. I was then a stockholder of the bank to the extent of $2,000 or $3,000.

Cross-examined, witness testified as follows:

Du Bois dissolved with Askew, Du Bois & Co. 5 or 6 years before he failed, I think; don't know exactly the time. I heard he had trouble with that firm, but not what it was; didn't hear that it was appropriating money of the firm and not accounting for it. I heard there was trouble and that the old man Askew, Joe's father-in-law, took Joe's side; that it was a kind of family trouble, but never heard what it was. I never heard of the Buffalo transaction by that designation.

Q. Did you hear of a forgery of a bill of lading in connection with a draft?

A. No; I saw something of the kind in the papers. I call to mind now there was some reference in a general way—no names—to some kind of a transaction of a dishonorable nature in regard to a bill of lading; don't remember what the point was, but remember hearing McLean say Du Bois was the man, or that he guessed it
257 was Du Bois. McLean was a rival dealer in hides. That was, probably, the year before he failed; don't remember any particulars as to amount involved or anything of that kind; don't know that there was an effort to keep it quiet. I never heard anything more about it than what I saw in the papers. Du Bois went right along in business; saw him a good deal after that. He was in our office nearly every day. I knew he was speculating on the Chicago wheat market in option deals, & judged he was in to a considerable extent. Frequently he would show me gains, but never any losses. Frequently, when in our office, he would show me where he had made a couple of thousand dollars. We thought he was a lucky dog & beat us all to pieces. In relation to my introducing him to Mr. Thornton I would say, if the bank had asked me if Joe Du Bois had asked me for a loan of $1,000 to $5,000, or any considerable amount, without security, [if] I thought he was good for it, I would have said no; I would have said he is not the kind of a man to loan your money to, because I knew nothing of his financial condition, & did not think he had good commercial credit in a way to back a loan. I want it distinctly understood that I intro-
258 duced him for the kind of business he proposed to do. He said he didn't want to borrow any money, & I knew he was doing a large cash exchange business, & the value of the *that* exchange business was the thing that was considered. I introduced Du Bois to the bank about six months before he left. I would not have loaned Du Bois any considerable sum, owing to his speculative habits. From what I heard my impression is Du Bois was engaged in grain speculation several years.

Re-examined on part of defendant, witness testified as follows:

Du Bois was a dashing, enterprising, forward kind of man. He seemed to have leisure for all kinds of public hurrahs; was a member & director of the board of trade, a director in the Fair Ground

Association, the Exposition of Kansas City, captain of Craig Rifles, and running all kinds of public matters. He was a member of the city council. Craig Rifles was a social & military organization, more social than anything else, high-toned, very jealous of their honor & standing. Du Bois was a very genial, pleasant, companionable kind of man, rather fond of show, drove fine horses, had a fine sleigh & fine robes, & went to fine dinners, &c., & seemed at the time he failed & for a year before to be at the zenith of his popularity in
259 Kansas City, so far as I could judge by the honors showered upon him.

Recross-examined, witness testified as follows:

I don't remember about Du Bois' being [a] candidate for mayor. May have seen his name mentioned in the papers, as yours & mine & others may have been. I don't think anybody ever circulated his name seriously as an available man for mayor. I don't know the reasons why he was not nominated. I never could see the basis of his success and popularity for the positions he held. I never thought he was heavy or solid enough timber for mayor or councilman, especially for mayor.

Thereupon plaintiffs recalled Mr. J. S. CHICK as a witness in their behalf, who testified as follows:

Q. You said yesterday the Boston wool account was not closed until in November?

A. That was my impression, & I say so yet. It is not true that the drafts drawn on the Boston house were promptly taken up, the bank receipting Du Bois' check as early as the month of August. The Boston matter was not entirely closed up when the account was closed upon our books. There are entries since that in relation to the Du Bois account not charged to Du Bois. I am certain the
260 Boston drafts were not charged to Du Bois' account as early as August. They may have been charged to him and then other drafts drawn for the same amount, but I do not think that is the case. I have only a general knowledge of that business. When these drafts came into the bank they were credited to the account of J. N. Du Bois. When they were not paid in Boston we gave the guarantee. They were then paid by Grey, Dewey, Gould & Co. The bank received that money & they stood in just that way until the final wind up, when the balance was charged to profit & loss. The $27,000 was not charged to Du Bois' account at all. When the accounts of sales were rendered he was indebted to us over $8,000.

Q. Was he not indebted to you at all times from August until November on account of this matter?

A. As a matter of fact that was the final result of the transaction. We didn't know such would be the result until we got the final account of sale. Besides the guaranty from Ewing, we had taken as additional security on that Boston matter an assignment of another margin which was standing to Du Bois' credit in Boston,
261 mentioned by Mr. Mac Lellan in his testimony. That was

an order from Boston to turn over any balance that Du Bois had with them, through the Bank of Kansas City.

Q. Is it not true that if Du Bois had not been indebted to you, or behind on account of this Boston matter, the bank would have broken with him before, and that you merely continued dealing with him because the Boston matter was unsettled?

A. That appears in my testimony. The draft shown me, dated August 2, 1881, drawn by J. N. Du Bois on Whitney & Graham, Chicago, for $1,500, payable at sight to the order of E. K. Thornton, cashier, passed through our bank & was protested August 24, 1881. I don't know that the bill of lading attached to it was forged. I never knew why it was protested. I judge it was one of those drafts with bills of lading which the bank had assigned to it. I didn't see any bill of lading attached to it. When a draft is protested and then taken up we have no reason to inquire why it came back. I was not informed by the Chicago Hyde & Leather Bank that that draft would not be accepted because the bill of lading was
262 forged, nor did I receive such information from Gage, cashier of First National Bank of Chicago.

Q. When the Hartman drafts on St. Louis & the Cowan drafts on Chicago were protested did you not inquire why they went to protest?

A. So far as I remember all those drafts were paid. I have no recollection as to what was done with them. I don't know why they were not paid & protested, & then paid afterwards; I have no means of refreshing my recollection.

Plaintiffs' counsel here offered in evidence a statement of the account between the Bank of Kansas City & J. N. Du Bois, as follows:

263 J. N. Du Bois in account with Bank of Kansas City, Kansas City, Mo.

Dr.				1881.			Cr.	
Oct. 1	Ch'ks	620	35	Oct. 1	Bal.	319	64	
3		27	72	1		204	75	
5		196	59	5		292	50	
6		679	67	6		1,295	96	
7		679	24	7		269	50	
8		286	76	10		1,265	50	
10		1,255	82	11		1,701	45	
11		1,520	70	12		995		
12		869	89	13		1,680	55	
13		1,334	08	15		995		
14		435	34	17		1,990		
15		1,112	16	18		1,990		
17		1,934	29	19		6,807	85	
18		8,267	68	20		359	50	
19		520	99	21		155		
20		507	39	22		1,180		
21		291	71	25		4,483	75	

22	------	1,111	80	26	------	1,695	75
24	------		45	27	------	1,611	25
25	------	5,462	28	29	------	1,094	50
26	------	1,453		No. 1 Bal.	------	694	33
27	------	896	78				
28	------	63	94				
29	------	1,491	75				
31	------	61	40				
		31,081	78			31,081	78
Nov. 1 Bal.	------	694	33				
1	------		55				
5	------	4,855	96				
7	------	2,004	60				
		7,555	44	Nov 7	------	7,555	44

264 Cross-examined, witness testified as follows:

Witness being shown said statement of account between the bank & Du Bois, said: On October 11th the checks were $1,520.70, the deposit $1,701.04, left credit balance $82.45. On the 12th, deposit was $995, the checks were $869.88, left credit balance $207.56.

Q. On October 11, 1881, you cashed draft of Du Bois drawn on these plaintiffs. What was the amount of that draft & what entry was made in the cash-book?

Objected to by pl'ffs as not cross-examination.

Def't's counsel offers to show that said draft was not taken in payment of a pre-existing indebtedness of Du Bois.

COURT: Why do you refer to that testimony?

DEF'T'S COUNSEL: Because it sets out in detail the condition of Du Bois' account as prepared by the attorneys on the other side.

COURT: Do you submit that for the purpose of refreshing witness' memory?

DEF'T'S COUNSEL: Yes, sir; and explaining this matter in connection with that.

Objected to by pl'ffs' counsel, because not gone into on direct examination and as being improper.

Objection overruled. To which ruling plaintiffs duly excepted.

265 Pl'ffs' counsel further objected to witness' reading his deposition instead of testifying from memory.

Objection overruled. To which ruling plaintiffs duly excepted.

WITNESS: On October 11th we charged Du Bois 90 cents; also $603.17, $48.45, $200, $225, $16.23, $263.45, $163.50; total, $1,520.70. We credited him with proceeds of a draft, $1,701.45, a draft of $1,710, I guess. The exchange on that draft was $8.55, leaving $1,701.45 as a deposit. Witness thereupon proceeded to explain, by aid of said deposition, the details of each day's transaction of

the bank with Du Bois, resulting in the various entries appearing upon said statement of account offered in evidence by plaintiffs' counsel. The last draft on Goetz & Luening was dated October 24th & credited on October 25th. The draft I suppose came in too late to go on the regular books, and passed to Du Bois' credit the next day.

Q. In regard to drafts that go to protest & come back to the bank what entry is made upon the books?

A. Drafts that come back protested, we first endeavor to
266 get the party we get them from to take them up. They would be charged to such party. If those Boston drafts had been returned, if they were charged to Du Bois, they would appear there in that statement; if they had not been provided for before that time, they would appear on this account taken from the ledger. The returns from Grey, Dewey, Gould & Co., on that wool, appear on our books simply charged to profit & loss. It is a bad debt, and we charged it to profit & loss to get it out of our assets. That was done after that account.

Re-examined by plaintiffs' counsel, witness testified as follows:

Q. Show us on this account [if] Du Bois' draft on Goetz & Luening, of October 24th, & protested, was charged back to him?

A. Unless I had the checks I could not tell what composed the items. I think this last item on this account on November 7th is that draft. I presume it is. The account was closed on that day to profit & loss. That item, I presume, includes that draft & the protest. I presume the four thousand (4,000) and odd item is
267 the Trostel & Gallun draft that came back & was charged to this account of Du Bois.

268 Thereupon A. W. GOETZ, Jr., being duly sworn as a witness on behalf of plaintiffs, testified as follows:

I am one of the plaintiffs; recollect going to the Bank of Kansas City and having a conversation with Mr. Chick, its president, on Monday morning, October 31st, 1881, relative to Du Bois and his drafts. Mr. Sylvester was present.

Q. Please state the substance of that conversation.

Objected to as incompetent and irrelevant. Objection sustained. To which ruling plaintiffs duly excepted.

Plaintiffs' counsel thereupon repeated said question and offered to prove in connection therewith by said witness that at said interview, while none of the shipments has as yet arrived and there were still continued business dealings and relations between Du Bois, the bank, and the plaintiffs, relating to and growing out of some of these drafts and acceptances, the president of the bank stated that he knew Du Bois to be unscrupulous but shrewd; that when he first came to open an account with the bank, he, the president, had refused to receive him as a customer on account of his bad reputation in business matters; that he had afterwards accepted him on the

special request of one Slavens, a co-director and stockholder
269 in the bank, and on the agreement that the business should remain confined to the discounting of drafts accompanied by collaterals; that the bank ever since had done only a discount business with Du Bois, but became itself at one time largely involved in certain wool transactions of Du Bois' as early as July or August, 1881, and that they would have broken off their relations with him before if it had not been that this wool matter remained unsettled.

The court adhered to its previous ruling sustaining defendant's objection. To which ruling plaintiffs again duly excepted.

Thereupon plaintiffs rested their case.

The foregoing was all the evidence offered or adduced by either party.

After the plaintiffs had rested their case, counsel for the defendant bank moved the court to strike out divers portions of the testimony as incompetent, irrelevant, and immaterial. Whereupon the court asked counsel for plaintiffs to argue the question whether there was any evidence submitted in the case which ought to be submitted to the jury.

After argument of said question the court instructed the
270 jury to return a verdict in favor of the defendant bank upon the claim made against it by the plaintiffs, Goetz & Luening, and also to return a verdict in favor of said bank in the action wherein it is plaintiff, and Goetz & Luening are defendants, upon the draft sued on in that action for the sum of $2,197.16.

To which ruling and instructions the plaintiffs, to wit, the said Goetz and Luening, duly excepted.

271 *Article Published in Kansas City Journal of Aug.* 24, 1879.

EXHIBIT "A." J. S. R., *N. P.*

Unpleasant denouement. A sensational story by the Alley sheet, proven to be utterly false. The reportorial imagination works great damage to the grain men. An unprejudiced statement of the whole matter made necessary.

It is the misfortune of Kansas City that there is published here an utterly unreliable, irresponsible sheet which never hesitates upon the merest rumor to utter any statement however damaging to the character of any citizen, or to the commercial standing of any class of business men, if it will only produce a sensation. The issue of yesterday furnished abundant proof of this fact. Under the head of "checkmated," that paper published yesterday morning a sensational story about certain alleged crooked transactions in grain, but in the whole article there was not a single syllable of truth.
272 Nothing more damaging to the business interests of the city was ever published even by the press of rival cities. It was a cowardly stab in the dark by a paper which is nothing if not sensational. The reporter confesses he knew nothing about the trans-

action which warranted such a publication, and says that "but for the dropping of an unguarded word yesterday (Friday) in the presence of a Times representative by a gentleman at the board of trade, the fact of the forgery might have been withheld for weeks and perhaps months." Upon this unguarded word he based a long tissue of falshood, drawn purely from his imagination, as the sequel will show. Upon such a rumor he does not hesitate to fabricate a statement which he must have known would be damaging to every grain merchant in the city. The charge is not located, and all must suffer from the effect of it. The grain trade of Kansas City is one of its most important interests, and upon nothing does the growth of that trade and the consequent general advantage to every other business interest of the city depend so much as upon the reputation of the grain merchants for integrity and fair dealing. So fully is this appre-
273 ciated by the grain men themselves that the rules of the board of trade are so formed as to make even the suspicion of irregular dealing the proper subject of investigation by the officers for that purpose. The Times boasts that "but for the dropping of an unguarded word in the presence of a Times representative the fact of the forgery might have been withheld for weeks, and perhaps months." The fact is that, so far as the Times is concerned, neither the facts nor anything like the facts have ever been published, and, so far as appears from the story published, no effort was made to get the facts. Now, the Journal is able to prove by the testimony of three business men, who stand as high as any in the city, that its reporters knew of the transaction within six hours after it culminated. However, satisfactory evidence of all the facts was not obtainable till yesterday morning, and for that reason publication of the case was withheld till to-day, the Journal being unwilling even to state the facts without the names lest innocent parties should suffer. It would have been perfectly safe as far as that is con-
274 cerned, but not honorable. However, now that the matter has been hinted at and suspicion has been turned in the wrong direction, it becomes the duty of the Journal to give the facts to the public as the reporter finds them, and let the blame fall where it belongs, and not upon innocent heads.

275 *The Buffalo Side of the Case.*

Wednesday morning there arrived in this city a middle-aged man whose appearance indicated that he was a German. He went to the Lindell and registered as "L. Geissler, Buffalo." He appeared very much excited, and as soon as he had obtained a check for his baggage he started out in search of an attorney. He found Major Warner, of the firm of Tichenor & Warner, and stated to him his business. Mr. Geissler is a member of the firm of Hoefield & Geissler, of Buffalo, tanners and dealers in hides, wool, and tallow. This firm has been dealing quite extensively with Captain J. N. Du Bois.

Since the first of August, it is said, Hoefield & Geissler have honored drafts attached to bills of lading made in favor of Mr. Du Bois for goods represented to have been shipped over the St. Louis, Kan-

sas City and Northern railroad to the amount of $22,700. As no goods came to hand, Hoeffield & Geissler became anxious to know why. They telegraphed to Geo. Marsh, the freight agent of the St. Louis, Kansas City and Northern here, to know how much goods had been shipped to them by Capt. Du Bois since the 1st of
276 August, and Mr. Marsh instructed his chief clerk to reply, "Not a pound." Mr. Geissler was immediately instructed to proceed to Kansas City and settle up the business. He missed the first train, and was so worried by the enforced delay that it made him almost sick.

Mr. Geissler took the bills of lading to the railroad office to see if the signatures were genuine. Mr. Marsh says that he did not examine the bills to see how much they represented, but examined the signatures, and, in the presence of witnesses, informed the Journal reporter that he did not sign them and did not authorize any one else to sign them, and that the goods therein receipted for were never received by the railroad company.

Geissler's only object was to get back the money, and he resolved to pursue that course which would be the surest way to recover it. He concluded, first, to make a demand for the money, and, in case it was not forthcoming, to attach the debtor's stock of goods. But to attach the stock he must be able to give bonds for double the amount. It was not an easy thing for a stranger in the city to
277 give bond in that sum. A prominent business man here was applied to to sign the bond. He refused to do so unless he was allowed to know something about the case. Mr. Geissler telegraphed to Schelhoh, a wealthy tanner of Buffalo, to request the merchant to sign the bond. Still he refused to sign, notwithstanding he was offered a draft on New York for $6,000 to insure payment of all expenses. He was asked if he would sign the bond if Mr. Rumsey, of Buffalo, would telegraph him to do so, Mr. Geissler being reluctant to state the nature of the case. He replied that he might be more apt to. Mr. Ramsey telegraphed the merchant to sign the bond, and so did Mr. Root & Keathing, promising him full protection. Finally he consented to sign it. No bond was given, however, as it was not needed.

Capt. Du Bois was at Bismark Grove with his company Wednesday. Thursday, about 11 o'clock, Mr. Geissler's attorney went to Mr. Du Bois and demanded the goods or the money. The money was paid, and it is understood that it was raised in two hours
278 after the demand was made, which goes to show that Capt. Du Bois' credit is A 1 at home. Upon payment of the claim the bills of lading and other papers were delivered to Capt. Du Bois, and there the matter stopped. Mr. Geissler left yesterday for the West.

Capt. Du Bois' Statement.

Desiring to give Capt. Du Bois an opportunity to explain the matter, his statement of the case is added. He says: "The drafts for $22,000 were drawn, and Mr. White notified me that they had

been protested. That was ten days ago. I changed the consignment to a different party. I didn't know till last Saturday night that these drafts were paid by the party upon whom they were first drawn. I notified them that the goods had been reconsigned to a different party, and to draw on me for the amount of advance. The next I heard of it was when Maj. Warner stepped into my office Thursday morning. In five minutes the thing was adjusted."

The "Checkmated" Story.

The members of the call board and the public generally were very indignant at the Times yesterday for publishing a
279 rumor which affected the commercial standing of every grain dealer in the city.

The call board appointed a committee of three to report on the matter. It did not take them long to find out that it was not a grain man who was charged with irregular transactions, and there their duties as investigators ended. They did not stop there, however, but demanded a retraction from the Times, and obtained a promise that it would be made.

280 *Article Published in Kansas City Daily Times of Aug.* 23, 1879.

Ex. I. J. S. R., *N. P.*

Checkmated. The clever scheme of a forger to raise $22,000 in this city. How a prominent business man was caught up and nailed by an amat*ure* detective.

A very crooked transaction has just been unearthed in this city, in which parties of heretofore unimpeachable character were chief actors. Said transaction involved a sum of money amounting to $22,000, and when it is told that the scheme was a well-laid case of forgery, new interest is attached. The matter was discovered only by the merest chance, and when confronted with his guilt the principal weakened; but, as no cash was actually received, the case has been hushed up, owing to the high position and reputation of those interested. The facts in the case are these: A few days since a well-known business man, whose weekly dealings amount to thousands, made his appearance at the desk of a prominent banking
281 establishment with bills of lading from one of the main lines of railroad leading east from this city, stating that he had shipped grain to an Eastern city to the cash value of $22,000. There was nothing unusual in this, as the man dealt largely in grain, and when he made a draft on the consignee in New York for the amount the draft was attached to the bill of lading and forwarded. For convenience sake we will say that this took place Monday last. On Wednesday certain parties from the East arrived unexpectedly in Kansas City who were interested in the transaction by reason of the use of their names by the consignor as the consignees. The fact of the shipment being incidentally mentioned, a startling denouement was made. It was to the effect that the "well-known business man"

had not sent a bushel of grain to the persons named as consignees, and that, in all probability, the bills of lading were forgeries. This was a surprise, and a startling one, and for a time it could not be be-
believed, owing to the man's position. No time was to be lost how-
282 ever, and an investigation was immediately instituted, which re-
vealed the fact [that] the bills of lading were forgeries, and that not a bushel of wheat, corn, or grain of an sort had been shipped. The paper on which the bills were made had probably been stolen, and as the signature of the agent or chief clerk of the railroad, by whom it was made to appear the grain had been shipped, was attached, it was looked upon as all right. To say that the parties who made the discovery were astonished is but a mild statement of the case—they were dum*b*founded. The evidence was before their eyes, however, and the fact of the forgery could not be gainsayed, and nothing was to be done but charge the guilty party with the "crookedness." A prominent attorney, who is versed in all the intricate points of criminal law, was called in, and after hours spent in consultation some sort of a compromise was effected. It was an easy matter to stop payment on the draft, and but for the dropping of an unguarded
word yesterday in the presence of a Times representative by a
283 gentleman at the board of trade the fact of the forgery might have been withheld for weeks, and perhaps months. So close has this secret been guarded that it is stated the bank through which the draft was drawn *do* not even now know that the bills of lading were forgeries. Hereafter no such bills will be received and accepted as good by any bank in the city, unless the fact of their genuineness is sure beyond all peradventure. The man who concocted the scheme, which failed only by accident, must have known that the forgery would be discovered sooner or later, and at the best it was but a a foolhardy attempt of a desperate man to "make a raise."

284 *Card from Mr. Du Bois.*

KANSAS CITY, *Aug.* 25.

To the Public:

As an evidence that I was not forced to raise the funds referred to in late sensational articles, I will state that if there are any parties in or out of the city who have any claims upon me, if they will present them, either in person or by draft, the same will be promptly paid. I will further state that the so-called forged B. L. are now in my office and can be examined by any party who can decide for themselves.

I make above publication not desiring a paper controversy and as my final say in the matter.

J. N. DU BOIS.

285 *Article Published in Kansas City Daily Times of August 24, 1879.*

"Ex. J." J. S. R., *N. P.*

That crooked transaction. The true inwardness of the affair gleaned from the parties interested. A full statement of facts learned from various interviews by "Times" reporters.

Yesterday's Times contained the following:

"A few days since a well-known business man, whose weekly dealings amount to thousands, made his appearance at the desk of a prominent banking establishment with bills of lading from one of the main lines of railroad leading east from this city, stating that he had shipped grain to [an] Eastern city to the cash value of $22,000. There was nothing unusual in this, as the man dealt largely in grain, and when he made a draft on the consignee in New York for the amount, the draft was attached to the bills of lading and forwarded. For convenience sake we will say that this took place Monday last. On Wednesday certain parties from the East arrived unexpectedly in Kansas City, who were interested
286 in the transaction by reason of the use of their names by the consignor as the consignees. The fact of the shipment being incidentally mentioned a startling denouement was made. It was to the effect that the "well-known business man" had not sent a bushel of grain to the person- named as consignees, and that in all probability the bills of lading were forgeries. This was a surprise, and a startling one, and for a time it couldn't be believed, owing to the man's position. No time was to be lost, however, and an investigation was immediately instituted, which revealed the fact [that] the bills of lading were forgeries, and that not a bushel of wheat, corn, or grain of any sort had been shipped."

The Times has nothing to explain or extenuate regarding the foregoing, except that we wish to entirely relieve the regular and legitimate grain dealers from any imputation that might be cast upon them by inference in casually reading the article.

The party implicated was not a regular grain dealer or grain commission merchant. He is a dealer in hides, and his name is
287 J. N. Du Bois. It is true he has dealt very largely in grain of late, and from the best information obtainable he was carrying 1,700,000 bushels of grain on margin at the time of the lamentable occurrence. Grain unexpectedly went down two and one-half cents, which left a large deficit in Mr. Du Bois' account. He was compelled to raise the money in some way, and he did raise it in the manner stated. Had he seen able to "tide over" the transaction would never have seen light, but all would have rested in the breasts of the bank and the bank officials, and the public would have been none the wiser. But he did not "make the connection." The party from the East on whom he drew the drafts came on [to] this city to protect himself, employed one of the most prominent criminal attorneys, and had all arrangements made for a criminal prose-

cution, when restitution was made, and the matter attempted to be hushed up. This was successfully accomplished, except with the Times, which holds that the best public interests are to be subserved by fully and fearlessly exposing and holding up to scorn such
288 crooked transactions among men supposed to be the representatives of the business interests of Kansas City. The Times has no grievance against Mr. Du Bois. It recognizes him as a public-spirited citizen of energy and enterprise, a member of the common council, and a leading light of the Republican party of this city. But these facts will not offset the culpability of this transaction, which will necessarily cast a reflection on the business standing of Kansas City. Having no desire to do him an injustice the Times gives him the benefit of a statement made yesterday.

Du Bois' Statement.

"He states that a few days ago he prepared a lot of goods to ship to a firm in New York city. He made out a draft for the amount of the goods and drew on consignees through the Kansas City Savings Association. A few days thereafter Mr. Du Bois was notified by Mr. Church White, of the Savings Association, that the draft had gone to protest. Mr. Du Bois therefore ordered the railroad company to ship the goods to a firm in Buffalo, New York. The next day a telegram came from New York city parties stating that
289 the drafts had been paid. Mr. Du Bois was out of the city at the time. When he returned and was made aware of the true state of affairs, he immediately telegraphed the New York city parties to draw on him for the amount they had paid, and he would promptly reimburse them. Instead of doing this, however, one of the firm came on to this city. He was promptly paid the amount due by Mr. Du Bois. Such is Mr. Du Bois' statement, of which he is given the full credit of publicity in our columns. The question at issue seems to be whether or not bills of lading were made out with the original drafts. The Times stated that such bills of lading were so made out, and it now reiterates that such was the fact, and that they are forgeries. But to be doubly sure a Times representative was dispatched at a late hour last night to find Mr. Marsh, freight agent of the St. Louis, Kansas City & Northern road, and obtained from him some information regarding the matter. The bills of lading figuring in the premises were said to have been — over this line.

290 *Mr. Marsh's Statement.*

Mr. Marsh was found at his pleasant home in Wyandotte, and, when importuned, stated at once that "bills of lading did figure in the transaction, and that said bills were forgeries."

"Did you see the bills?"

"I did; they were brought for my inspection by the party to whom forwarded in the East."

"And you pronounced them forgeries?"

"They were signed by my name as agent of the St. Louis, Kansas

City & Northern road, which was not put there by myself or any of my clerks."

"What reason had the Eastern party to suppose that everything was not right?"

"He waited several days after the bills were received, and then telegraphed me for information regarding the invoice which called for hides."

"Did you answer him by wire?"

"I did, and to the effect that Mr. Du Bois, for he was the party named in the bills of lading, had not forwarded any hides as called for in the invoice."

"He came West at once, then?"

"I presume so, as he appeared at my office two or three days afterward."

"Was he astonished at the statement of facts?"

291 "He was greatly astonished. I had looked into the matter, however, and knew that the bills of lading were false ones, as they were dated since the 1st of August, and my telegram to the Eastern party was that Mr. Du Bois had not forwarded any hides since that time."

"Is it customary to take bills of lading and send them forward as collateral to Eastern parties?"

"Yes; if they are legitimate; drafts are made and must accompany the bills."

"Have you those particular bills of lading?"

"Oh, no; they were taken away, and, no doubt, are destroyed."

Mr. Marsh had nothing further to say regarding the matter, and simply answered questions asked by the interviewer. The public can decide whether or not bills of lading "figured in the transaction."

Of course, the banks and the lawyers interested and engaged in the case would not and could not divulge any State secrets that would interest the public. These official and professional gentlemen were artistically pumped yesterday, but they were as dumb as oysters. But enough had leaked out to justify the Times in all statements made, despite the reticence of Major Warner and Mr. Church White.

(End of Mr. Marsh's statement.)

292 Because none of the various matters and things above stated do appear of record, the judge of said court, before whom said trial was had, has caused such proceedings to be authenticated by his hand and signature, this 18th day of May, 1883.

(Signed) CHAS. E. DYER, *Judge*.

JULY 11, 1883.

This day came The Bank of Kansas City, by its attorneys, and filed its satisfaction of said judgment, except for the sum of $897.69, with interest from June 30, 1883.

293 SEPTEMBER 21, 1883.

This day came August W. Goetz, Jr., and August F. Luen-

ing, by their attorneys, and filed the bond of Frank R. Falk in the sum of two thousand dollars, conditioned that they shall prosecute a writ of error to effect and answer all damages and costs if they fail to make their plea good, which bond is approved by the district judge, and is as follows, to wit:

Supersedeas Bond.

Know all men by these presents, that I, Frank R. Falk, of the city of Milwaukee, county of Milwaukee, and State of Wisconsin, am held and firmly bound unto Bank of Kansas City in the full and just sum of two thousand dollars, to be paid to the said Bank of Kansas City, its certain attorney, successors, or assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators by these presents.

Sealed with my seal and dated this nineteenth day of September, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately, at a term of the United States circuit court for the eastern district of Wisconsin, in a consolidated suit depending in said court between August W. Goetz, Jr., and August F. Luening, plaintiffs, against Bank of Kansas City; and Bank of Kansas City, plaintiff, and August W. Goetz, Jr., and August F. Luening,
294 defendants (consolidated), judgment was rendered against said August W. Goetz, Jr., and August F. Luening, dismissing their complaint on the merits, and also for the sum of two thousand three hundred and eighty $\frac{76}{100}$ dollars, damages and costs, on the complaint of said Bank of Kansas City, on which said bank has drawn from moneys deposited in court and applied on said judgment the sum of $1,500.63, and the said August W. Goetz, Jr., and August F. Luening having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Bank of Kansas City citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such that if the said August W. Goetz and August F. Luening shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

FRANK R. FALK. [SEAL.]

Sealed and delivered in presence of—
GEORGE SYLVESTER,
HENRY GOLL.

UNITED STATES OF AMERICA, }
Eastern District of Wisconsin, } ss:

295 Frank R. Falk, being first duly sworn on oath, deposes and says: That he is the surety named in the within bond;

that he is a resident and freeholder within said district, and is worth the sum of two thousand dollars over and above all his just debts and liabilities, in property within said district not by law exempt from execution.

FRANK R. FALK.

Subscribed & sworn to before me, this 19 day of September, A. D. 1883.

GEORGE SYLVESTER,
Notary Public, Milwaukee County, Wisconsin.

(Endorsed:) Approved by Chas. E. Dyer, judge.

Whereupon it is ordered that execution be superseded, and a writ of error and citation issued, and a copy of said writ of error lodged for the defendant in error.

296 UNITED STATES OF AMERICA, }
Eastern District of Wisconsin, } *ss:*

I, Edward Kurtz, clerk of the circuit court of the United States of America for the eastern district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate with their originals, now on file and remaining of record in my office, and that they are true copies of such originals and correct transcripts therefrom, being a full and complete transcript of the record in the cases of August W. Goetz, Jr., *et al. vs.* Bank of Kansas City, and Bank of Kansas City *vs.* August W. Goetz, Jr., *et al.*, consolidated by order of said court.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Milwaukee, in said district, this 22nd day of September, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 108th.

[Seal U. S. Circuit Court, Eastern District, Wisconsin.]

EDWARD KURTZ, *Clerk.*

297 UNITED STATES OF AMERICA, *ss:*

[Seal U. S. Circuit Court, Eastern District, Wisconsin.]

The President of the United States of America to the judges of the circuit court of the United States of America for the eastern district of Wisconsin, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court of the United States of America for the eastern district of Wisconsin, before you, between August W. Goetz, Jr., and August F. Luening, plaintiffs, and Bank of Kansas City, defendant, and Bank of Kansas City, plaintiff, and August W. Goetz, Jr., and August F. Luening, defendants, consolidated, a manifest error hath happened to the great damage of the said August W. Goetz, Jr., and August F. Luening, as by the complaint appears, and it being fit that the error, if any there hath been,

should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that of right and according to law and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 21st day of September, in the year of our Lord one thousand eight hundred and eighty-three, and of the Independence of the United States the 108th.

EDWARD KURTZ,
Clerk U. S. Circuit Court for the Eastern Dist. of Wisconsin.

Filed September 21st, 1883.

EDW. KURTZ, *Clerk.*

298 UNITED STATES OF AMERICA, *ss:*

To the Bank of Kansas City, Greeting:

[SEAL.] You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Wisconsin, wherein August W. Goetz, Jr. and August F. Luening are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Charles E. Dyer, district judge of the United States for said district, at the city of Milwaukee, this 21st day of September, A. D. 1883, and of our Independence the 108th.

CHAS. E. DYER, *Judge.*

We accept service of the above citation this 22nd day of September, A. D. 1883.

FINCHES, LYNDE & MILLER,
Att'ys for Bank of Kansas City.

Endorsed on cover: E. Wisconsin C. C. U. S. No. 306. August W. Goetz, Jr., and August F. Luening, plaintiffs in error, *vs.* The Bank of Kansas City. Filed 27th September, 1883.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1885.

No. 306.

AUGUST W. GOETZ, JR., AND AUGUST F. LUENING, PLAINTIFFS IN ERROR,

vs.

THE BANK OF KANSAS CITY.

Points and Brief for Plaintiffs in Error.

(References are to Marginal Pages of Printed Record.)

SUMMARY OF THE RECORD.

About November 16th, 1881, the plaintiffs in error, commission merchants at Milwaukee, brought an action in State Court against the Bank of Kansas City for moneys had and received—the amount of four certain drafts, drawn by one *Du Bois*, of Kansas City, upon these plaintiffs, to the order of E. K. Thornton, cashier of said bank, and paid by the plaintiffs in due course of time. (Page 116.)

There purported to be attached to the drafts certain bills of lading and invoices, which, however, proved to be forgeries. The four drafts thus paid, amount to $7,395; — a fifth one, for $2,000 more, was accepted, but not as yet paid, when the fraud was discovered; it was allowed to go to protest for want of payment.

The case was removed to the United States Circuit Court for the Eastern District of Wisconsin, under the act of 1875. About the same time the defendants in error filed their complaint in the same Court against these plaintiffs, to recover the amount of the

fifth draft, which had been accepted, but not paid as aforesaid. These two actions were afterwards consolidated because they substantially involved the same questions.

The case was tried by aid of a jury. Upon the facts it appears to be *sui generis*, presenting (among others) a question of commercial law, which is attracting the widest attention in the business world.—

While the bank claims to have discounted these drafts in the ordinary course of business, and therefore to be entitled to the status of a *bona fide* purchaser of commercial paper, the plaintiffs assert that *Du Bois* was known *at all the Banks of Kansas City* to be a dangerous, desperate and dishonest character, who of late years had fallen into the habit of practicing similar frauds upon an unsuspecting public, at home and abroad, and that the defendants, when dealing with him, prompted by mercenary motives and other causes, purposely closed their eyes to his wicked doings; that they at no time dealt with *Du Bois*, in the ordinary course of business, but that they grossly disregarded their duty to the public at large and in particular to these plaintiffs, and contributed by their own acts to giving faith and credit to the drafts in question and to the perpetration of this and other simultaneous frauds.

The District Judge, before whom the case was tried, after ruling out a great portion of the evidence, which was offered on part of the plaintiffs, instructed the jury to return a verdict for the defendants: "that the plaintiffs take nothing by their suit, and that the bank recover from them the amount of the fifth acceptance." (270.)

A motion for a new trial was made and denied, so that the question might receive the attention of this Honorable Court and consideration by a full bench.

PLEADINGS.

The pleadings are lengthy. The plaintiffs cause of action sounds in tort, although the tort is waived and a simple recovery demanded. (116.) The complaint charges substantially that the bank did not acquire any of said paper in good faith and in the ordinary course of business; but that on the contrary it allowed itself to be made a party to a fraudulent scheme and misled these plaintiffs by various writings, indorsements and certificates of its own upon said papers, and thereby threw these plaintiffs

off their guard, being more or less instrumental in enabling the drawer to carry out his fraudulent machinations. (94–116.)

The answer denies all charges and in[illegible] fraud, and pleads affirmatively that said paper was discount[illegible] in good faith. (124–125.)

The issue relating to the fifth draft presents the same questions of fact and law. (12–37.)

STATEMENT OF THE EVIDENCE.

Plaintiffs are commission merchants at Milwaukee; *J. N. Du Bois*, up to the time of the forgeries herein complained of, was a heavy dealer and shipper of hides, grain, etc., at Kansas City.

DU BOIS' CHARACTER AND REPUTATION.

Until the spring of 1879, the standing of *Du Bois* was good All witnesses agree that he was very active, not only in business but in politics and society. He was a large and extensive shipper, whose banking transactions ran up to $100,000, more or less per month. His shipments extended to all parts of the United States, and his continuous success and indomitable energy secured him the name of a smart, sharp business man. (229, 234, 253.)

HE TURNS OUT TO BE A FORGER.

But while such was his reputation up to that time, various matters came to light about the year 1879, which showed him to be not only slippery and reckless, but unscrupulous—ready at all times to take an advantage, when he "got into a tight place." (Mann 223.) Different transactions combined, to give him thenceforth an unenviable notoriety for crookedness and unfair dealing, to which we shall shortly allude:

THE BUFFALO ESCAPADE.

A term, charitably applied by one of the witnesses. (Schroeder, 249.) The transaction involved about $22,000. The firm of Hoefeld & Geissler of Buffalo, N. Y., had been honoring *Du Bois'* drafts, to which were attached bills of lading. Several drafts had thus been paid, but the goods failed to arrive. The firm telegraphed to the freight agent, Geo. Marsh, and were informed that since the first day of August, 1879, not a pound had been shipped to them by *Du Bois*. Mr. Geissler immediately started for Kansas City, engaged a criminal lawyer and *Du Bois* was compelled to

make th[illegible] "little unpleasantness" good. The railroad agent re-
[illegible]se frauds to his company. The newspaper reporters
[illegible]n and inquired. The agent admitted to them the
[illegible] true. There was a good deal of talk and comment
[illegible]).

[illegible]unity awoke one morning to find one of its leading
"*forger*." The newspapers at Kansas City pub-
[illegible]ng articles.

Kansas City Daily Times, Aug. 23, 1879. (280.)
Kansas City Daily Times, Aug. 24, 1879. (285.)

Du Bois sought at first to explain away the true state of affairs, but his effort was utterly futile (284, 289, 278). The railroad company never received the goods, and never issued any bills of lading therefor (276, 290, 291). With *Du Bois'* card and "explanations" before the public, the Times *reiterated* its former charge of forgery (289), and no further attempt was made to deny the same.

One of the papers (acting in, what it supposed to be, the interest of the city trade generally,) labored "to hush up the matter" (285), and influential friends assisted in out-living the unpleasant discovery. This forgery of August, 1879, which became thus public, was not, however, in point of fact, the first one; a similar fraud occurred as early as May, 1879 (*Marsh*, 231).

UNENVIABLE NOTORIETY.

But, while in this effort to "hush up" they partly succeeded, so that the news did not spread to *other distant* places, the forgeries were at home freely talked about on the streets, among business men (215, 232, 235, 236), and on the Board of Trade (233). "Occasionally a man would call out to me (*Geo. Marsh*, the Railroad Agent,) and ask me whether I had signed any bills of lading lately for *Du Bois*" (232). In fact, the discovery created a widespread and much talked of sensation (215, 222). Unfavorable comments were heard on all sides (249, 235). People said, *Du Bois* was slippery and unscrupulous. (209, 226, 229, 251, 232). A general mistrust was created with reference to *Du Bois* and his dealings among business men and bankers (209, 213, 218, 220, 235, 232, 229).

PROTECTIVE MEASURES ADOPTED BY THE TRADE.

It is true, he was continued to be received in society; he remained a member of the Board of trade; run for alderman, and proceeded to do business as theretofore. But that was probably not so much to be ascribed to his having reformed, as to his irrepressible disposition and the peculiar character of the town, in which he lived. For we find that immediately thereafter, *Smith, Fossett & Co.*, of New York, sent one *John McLellan* to Kansas City, who had to act apparently as *Du Bois'* bookkeeper, while in fact looking after the interests of the Eastern parties and seeing that shipments were made correctly (208, 238). His friend *Stevens*, who was intimately acquainted with *Du Bois*, did not even consider him "heavy or solid enough timber for an alderman" (259). The Kansas City Savings Association (*C. J. White*, cashier), where *Du Bois* was doing business until spring of 1881, absolutely refused, after the Buffalo episode, to pay any of his drafts (although bills of lading were invariably attached), unless *McLellan* signed them (209, 211).

> "I considered them *McLellan's* drafts. As to *Du Bois*, I had not much confidence in him. I thought he would do almost anything" (213).

Mr. White's past experience with *Du Bois*, as detailed by the cashier, at pages 207—213, evidently justified this opinion. Discrepancies, not only, but forged bills of lading were not a rare occurrence (212, 231, 202, 206). However, in the spring of 1881, *Du Bois* changed his bank, and also the accustomed mode of doing business. *McLellan*, who from 1879 until then had attended to shipments, "written out bills of lading, seeing that they were sent," took the inside department, while *Du Bois* assumed charge of the outside. *Mr. White* about this time discontinued doing business with *Du Bois* altogether, "because his account gave them too much trouble" (207.)

REFUSED BY ALL THE BANKS.

Du Bois then applied to the other banks, but *every one* of them refused to receive him as a customer, because the knowledge of his crooked dealings was so notorious.

A. A. Whipple, of the Citizen's National Bank, testifies:

> "In spring, 1881, *Du Bois* applied to our bank to open an account there. I did no consider him a desirable customer for a

bank. I had heard of a crooked transaction, with which he was connected. In view of *Du Bois*' reputation, I would have dealt with *Du Bois* in any other style of transactions, as with any other business man; but in advancing money on bills of lading, I would have disliked to have done so without knowing they were genuine." (220.)

Again he made application to the Bank of *Armour Bros.* (*Wil. H. Winants*, Cashier), but—

"We did not take his account, for the reason that his reputation was such, and his dealings, that we did not feel safe in doing it. His reputation at that time, so far as I am acquainted with it, was very bad in his business transactions. He made the application, stating that he was shipping hides and wool, and that he would attach bills of lading to his drafts, and he wanted to do business in that way. I told him that on account of his past record that would be objectionable; that we would have to look up every bill of lading. (215.)—I had heard of his transactions, through the newspapers, and the general talk throughout the town of his former forgeries of bills of lading. —It was generally talked of by his friends and the public. I heard of these things from a great many different directions." (215).

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Q. If *Du Bois* had made application to you to cash a draft, accompanied by what purported to be a bill of lading, would you have cashed it without first ascertaining the genuineness of the bill of lading?

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HIS REPUTATION WITH BUSINESS MEN.

Outside of the banks, his standing was even worse. A number of parties, prominent in business and society, expressed their opinion of *Du Bois*' character and reputation at this time, in still stronger terms:

James A. Mann, Secretary of the Journal Co.:

"The matter was one of general notoriety throughout the city. From my knowledge of the man, my acquaintance with him, he was unscrupulous, when he got into a tight place" (223.)

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the business community. The last two years, since those publications came out, he was regarded in his business transactions among my acquaintances, as those drafts and bills of lading purported—as a *forger*" (235.)

"I think all the people knew it" (the forgeries). (236).

To the same effect is the testimony of

Fred. C. Schroeder, commission merchant (249).

Carl Spengler, wholesale dealer (251).

EVEN THE BANK OF KANSAS CITY DECLINES AT FIRST HIS PATRONAGE.

While such was his general reputation, and he had thus vainly sought to be admitted to do business at four of the banks, he applied to the fifth and last one—the Bank of Kansas City.

This bank, like the rest, "declined at first to receive him as a customer" (*Chick* 177, 187). The president "had known him for several years, and also knew what banks he had been doing business with before he came to me" (177).

THE PRESIDENT KNEW DU BOIS WELL.

"I knew he had considerable trouble in 1879, in one instance. Whether on a forged bill of lading or not, I don't remember, but he had some trouble" (178.)

In fact, *Mr. Chick* knew more about the Buffalo matter than most others. The news came to him even before it reached the Kansas City Savings Bank, and he went up to *Mr. White* to offer his assistance, because he thought the bank "got largely stuck" (179, 180). He had several conversations with the "old gentleman," who came from Buffalo (180). He also read at least one of the papers (181).

WHY THE BANK DECLINED THIS NEW CUSTOMER.

The reason which *Mr. Chick now* assigns for first declining *Du Bois'* banking custom (which was very large and profitable) (258,182), is evidently an afterthought. The banker tries to make us believe that he did not know the charactar of the *business*, which *Du Bois* wanted to transact. When *Mr. Sylvester*, one of plaintiffs'

attorneys, called on him, *Mr. Chick* was more frank in his admissions:

> Q. Did you not state to us that, when *Du Bois* first came to you to open an account, you utterly refused to have any thing to do with him, because you regarded him as slippery and unreliable?
>
> A. I do not remember of that; I may have said so. I don't deny it. (1876).
>
> "When *Du Bois* came to our bank to change his account, I did not accept it *without hesitation*. I hesitated, because I *did not care* about handling his business or taking *customers of that kind*." (191.)

If any doubt on this proposition remained, it would be set at rest by the testimony of *Mr. Slavens*, who introduced him at that time to the president and cashier, warmly advocating this new customer and explaining fully the nature of the business to be done. (*Slavens*, 254, 258.)

This *Mr. Slavens* (who transacted a *cash* business with *Du Bois* amounting to $25,000–$30,000 per month (255), and who was also a stockholder in the bank) came to me (*Mr. Chick*) and "interceded for *Du Bois* in *such strong terms* that *finally* I concluded to take his account." (191.)

> *Mr. Slavens*, however, informs us "I *want it distinctly understood* that I introduced him for *the kind* of business he proposed to do. He said he did not want to borrow any money, and I knew he was doing a *large cash exchange business*, and the value of that exchange business was the *thing that was considered*." (258.)

THE BANK FINALLY ASSUMES THE FORGER'S RISK ON A LIMITED BASIS.

Yes, the value of the exchange business, amounting to from $25,000 to $100,000 per month at ¼ to ½ per cent. (196), was the thing that was considered. It tempted—so that every other consideration had to yield. The bank finally concluded, notwithstanding *Du Bois'* reputation, to take its chances. He was admitted as a customer; not however for banking business generally, but for a *particular purpose* merely, "on a limited basis." (*Chick*, 186.)

What was that limited basis?—We again find the answer in

Mr. Chick's testimony:

> "I do not know that we ever discounted a note for him.—We never loaned him any money. We may have allowed him to overdraw a very small amount. Our business with him was principally all exchange business—that is, he would ship a lot of hides or wool, we would cash his drafts *on the bill of lading attached*, and that was the *end* of the business. We would cash his drafts when they were *secured* by shipments of merchandise, evidenced by bills of lading. The *rule of our business with him* was—it was *advances on shipments*, which was all he required. (177.)
>
> "The business relations were *limited* to that, because that was all he required." (*Chick*, 177.)

Thus *Mr. Du Bois*—notwithstanding he was constantly looked upon with suspicion, was admitted to do business with the defendant bank on a limited basis (186). And it is but a fair inference from the evidence, that they *knew* he had forged bills of lading before: not only in one instance, but often. First in May, 1879 (231); then again in August, 1879, the Buffalo Escapade—there were eight of them (235), involving $22,000.

THE RASCAL DID NOT REFORM.

While thus doing business at the Bank of Kansas City, a great many matters and defalcations occurred, which could not but awaken the officers to the true inwardness of affairs, if at all inclined to notice the same.

The next six months experience with *Du Bois* presented the following striking indicia:

> *McLellan* and *Du Bois* changed places; the latter again assumed charge of *outside* affairs; shipments and bills of lading (239).
>
> "*McLellan* would take the bills of lading to the bank and put *them*—on deposit to the credit of *Du Bois*." (239).
>
> "Twenty or thirty times in summer of 1881, drafts came back protested, although accompanied by bills of lading." (239, 212).
>
> "*Thornton*, the cashier, would not have anything more to do with them; they were always coming back, and they did not want to do business in that way" (240).
>
> "*Thornton*, the cashier, refusing to take it, I (*McLellan*) would return it to *Du Bois* and tell him, and he would go him

self to see *Thornton*, and make the deposit himself. That happened comparatively often" (239).

"One draft for a shipment sent to a town near Baltimore, with a bill of lading attached, for upwards of $2,000, was accepted and paid, but the bills of lading turned out to be "a forgery" (212).

"About six weeks prior to the *Goetz & Luening* affair, two bills of lading were forged for wool (202). This matter is known as the *Hartman & Co.* matter, of St. Louis (202). No efforts were made to keep the matter secret (203). It was fixed up by making a genuine shipment of wool to them."

Mr. Bridges thinks the forged bills passed through the Bank of Kansas City, where *Du Bois* did all his business (202). *Chick* admits it (184).

Fred. C. Schroeder, commission merchant, at Kansas City, cashed a bill of lading for him to the extent of $2,000. "It was returned on his hands" (249).

DU BOIS CHEATS HIS OWN BANKER.

As early as August, 1881, the Bank of Kansas City "got stuck" for $27,000 on bills of lading, purporting to be for wool shipped to Boston. The bank had discounted the drafts. The drawee refused to accept unless "the shipments would prove to be what they represented, and were all right" (241). The Boston parties reported to the bank that the wool "failed to come up to the amount marked on the bags, or the amount of weight of the invoices" (241).

In fact it was an immense steal. Only *one* bill of lading of that whole lot was signed by the agent (*Chick*, 196).

The bank afterwards transferred the disposition of what little there was of the consignment to another house, and exacted from *Du Bois* collaterals: An assignment of another margin in Boston (261), and an indemnity or guaranty, which a friend of *Du Bois* was compelled to enter into, to the amount of 10 per cent. of amount of drafts (200, 241). With all these additional securities on hand, the "little mistake" cost the bank in the end over $8,000 (201, 183).

Mr. Chick himself tells us in regard to this Boston matter (183).

pay his drafts drawn on two-thirds of the value of the hides (193.)

FORM OF PAPERS.

Thus the path to swindle was open. *Du Bois* forges a bill of lading or what purported to be a shipping receipt, issued by the Chicago and Alton Railroad Company (*Wil. E. Bridges*, Agent), under date of Oct. 11, 1881, reciting among other things that said railroad company had received from *J. N. Du Bois* 500 green hides of the weight, subject to correction, of 22,000 pounds, to be transported on the line of said railroad from Kansas City to Milwaukee, marked and consigned as follows: "To shipper's order. Notify *Goetz & Luening*, Milwaukee, Wis." (181, Complaint 96.)

Annexed to said document there was an invoice or value bill, purporting upon its face to give the details of net weight at 26,318 pounds, and market price at Milwaukee at 9¾ cents, or in the aggregate $2,566, referring to sight draft at two-thirds of the value, viz: for $1,710 (137, Complaint 96).

Further there was attached, so as to form part and parcel of the same transaction, a draft, dated October 11, 1881, drawn by *J. N. Du Bois* per *J. McLellan* upon these plaintiffs, whereby the plaintiffs were requested to pay at sight to the order of *E. K. Thornton*, cashier, $1,710 for value received, and charge the same to account of the drawer aforesaid. (157, Complaint 96.)

The bill of lading was endorsed by *J. N. Du Bois* in blank (97.)

THE BANK BECAME A PURCHASER OF THE BILLS OF LADING.

These papers *McLellan* took to the bank, and the latter pretends to have bought or discounted *them* (239). We purposely use the word "*them*," because it is evident from the defendant's own testimony that the thing discounted was not so much the draft as the bill of lading or shipment (*McLellan*, 239).

Such is the general understanding of the modern commercial world (*Luening* 158, 160; *Du Bois'* Letter Oct. 19, 1881, pages 165, 160; *White*, 211; *Whipple*, 220; *Marsh*, 233; *Schroeder*, 249).

> "I would not take them in any other way. I relied entirely upon these bills of lading as security for us in getting payment of the drafts." (*White*, 211.)

ADVANCES WERE MADE ON SHIPMENTS, NOT ON DRAFTS.

Such was also the understanding of these parties. In fact, *Mr. Du Bois* had been refused credit at defendant's bank in any other form:

> "He did not want to borrow money; his business was principally exchange business, cashing drafts on hides and wool that he took in and shipped right out again That was the way he handled our hides," (*Slavens*, 254).
>
> "I want it distinctly understood that I introduced him for *the kind* of business he proposed to do. He said he did not want to borrow any money." (*Slavens*, 258).
>
> "I do not know that we ever discounted a note for him—Our business with him was principally exchange business—that is, he would ship a lot of hides or wool, we would cash his drafts *on the bills of lading attached*, and that was the end of the business," (*Chick*, 177).
>
> "We would cash his drafts, *when they were secured by shipments of merchandise*, evidenced by bills of lading," (*Chick*, 177).
>
> "We did not look them up (the responsibility of drawees), because *we relied on the security in the bills of lading*" (*Chick*, 194). "I took this paper, all these acceptances, at that time, relying *entirely and exclusively* upon the shipment of the goods, for which the bills of lading were attached" (*Chick*, 199).
>
> "The rule of our business *with him* was—it was *advances on shipments*,—the business relations were limited to that, because that was all he required" (*Chick*, 177).

We desire at this time distinctly to call attention to this particular feature of the case, because in our opinion it presents upon the evidence a characteristic deviation from the construction, which our courts have engrafted upon similar transactions in the past. The particular shipment, evidenced by bills of lading endorsed in blank, transferable from hand to hand, and entitling the intermediate holder, as well as eventually the drawee, to the possession of the merchandise, becomes the primary and only consideration. The shipment is discounted; the draft is but a convenient form of ascertaining the amount of advances or lien.

THE BANK ABSTAINS FROM ALL INQUIRIES.

When these three papers were received at the bank, "*Mr. Thornton* (cognizant of the arrangement between *Du Bois* and

these plaintiffs), *passed on all the bills of lading in this suit"* (193).

It is *said* that he took no steps to ascertain the genuineness of the bills, although the banks at Kansas City, especially of late years, seem to be in that habit, "wanting to know who signed the bills of lading" (*Marsh*, 233).

And especially as to the bills of lading that came from *Du Bois*, no bank, since 1879, would take them without first ascertaining their genuineness:

Coburn, 218.
Winants, 215.
Whipple, 220.
McLean, 235.
Spengler, 252.

It is but natural that a bank should want to hold the goods until the drafts are paid, and if not paid, it would hold in bill of lading *title to stock* (*Du Bois'* letter, 160). Therefore a shipping receipt to shipper's order and by him endorsed in blank is the ordinary mode of business (97).

The arrangement between *Du Bois* and *Goetz & Luening* was well understood by the bank, as we have shown above. The weight of the hides in the bill of lading was stated to be 22,000 pounds *subject to correction*. The accompanying invoice or value bill purported to give the details of the shipment in more specific form: Net weight, 26,318 pounds (96).

Now what did the bank do after it has thus advanced on shipment and become a purchaser of the goods in law and in fact?

IT CERTIFIES TO THE WEIGHT AND INVOICE BY ENDORSING THE SAME.

Not only the draft, which was payable to the order of *Thornton*, cashier, but *also the invoice or value bill*, bear this endorsement (97):

> "Pay to *L. J. Gage*, cashier, or order, for collection on account of Bank of Kansas City.
>
> *E. K. Thornton*, Cashier."

PLAINTIFFS THROWN OFF THEIR GUARD AND MISLED.

Thus endorsed and certified, the papers are presented at Milwaukee to the drawees.

Date.	*Amount.*	*Accepted.*	*Paid.*
Oct. 11, '81.	$1,710.	Oct. 14.	Oct. 17.

(Draft *and invoice bill* endorsed by bank.)

Goetz & Luening knew the signature of the drawer, not that of the railroad agent. They made no inquiry, believing the bill of lading to be genuine.

"The endorsement of *Du Bois* on the bill of lading in blank, and the endorsement of the bank on the invoice or value bill, *influenced me to think* that the property belonged to the Bank of Kansas City, and I was dealing with the bank, and upon our acceptance and payment of the draft, the property mentioned in the bill of lading and the invoice would be transferred from the bank to us. I thought that the bill of lading, being in the shipper's name, and endorsed by him in blank, and transferred to the Bank of Kansas City, the security of the bank on the value bill guaranteed the goods in the bill of lading" (158, 159).

Other invoices, bills of lading and drafts rapidly followed:

	Date.	*Amount.*	*Accepted.*	*Paid.*
2nd.	Oct. 13, '81.	$1,685.	Oct. 17.	Oct. 21.
	(Draft and bill of lading endorsed by bank).			
3rd.	Oct. 17, '81.	$2,000.	Oct. 20.	Oct. 24
	(Draft endorsed by bank).			
4th.	Oct. 19, '81.	$2,000.	Oct. 22.	Oct. 26
	(Draft, invoice bill and shipping receipt endorsed by bank).			
5th.	Oct. 24, '81.	$2,000.	Oct. 28.	Protested.
	(Draft endorsed by bank).			

They were all alike in form, except as to the endorsement of the bank on the back of said papers, as above particularly noted.

It also appears from the evidence, that the fourth and fifth bill of lading ran directly to *Goetz & Luening* as consignees. *Mr Luening* explains how this was brought about. After Oct. 17, he sent a letter to *Du Bois*, requesting him to bill hides, thereafter shipped, directly to *Goetz & Luening*, because, in shipment of hides, they sometimes fall short in weight (157, 159). *Du Bois* answered by telegram (159) and by explanatory letter (160).

SHIPMENTS DELAYED.

While these various drafts were presented, accepted and paid, in rapid succession, the shipments seemed to be somewhere de-

layed. The plaintiffs, by telegrams and letters ever since Oct. 20, urged *Du Bois* to trace and speed them (161). *Du Bois* replied:

> "Will have shipments, that are behind, traced at once, but believe the delay has arisen partly from the high water, partly from an excessive pressure in freight at this point, which, however, I do not expect to be of long duration. Same on all incoming roads, and goods which I usually receive in five to eight days, are out since Oct. 1st" (165).

The next day he writes:

> "I find upon inquiry at the Railroad that freight is badly delayed, owing to high waters of the Mississippi" (165).

DISCOVERY OF THE FRAUD.

The plaintiffs did not at first mistrust that information. But it happened that one of their agents was traveling through that section of the country and they telegraphed to him, October 28th, to call on freight agent, Chicago & Alton road, and see when hides were shipped by *Du Bois* (163).

The fifth draft had then already been accepted. *Albrecht* knew nothing of the nature of these transactions, but he called on the agent, and then telegraphed to Milwaukee:

> "No hides shipped by Chicago & Alton from *Du Bois*" (163).

An inquiry by telegram from the railroad agent returned the answer—"no such bills of lading" (164).

APPARENT INDIFFERENCE OF THE BANK.

Aroused by the discovery, the plaintiffs telegraphed the same evening to the Bank of Kansas City:

> "Accepted and paid draft of *J. N. Du Bois* promptly. No hides in sight. *Closely trace and answer quickly*" (166).

A similar dispatch was sent to *Du Bois* (166).

The bank received this telegram promptly, but paid little attention (if any) to the same. They never answered (166). They claim to have sent the telegram the next day down to *Du Bois'* store (174), and when he absconded, they neither made efforts to trace either the hides or the forger, nor to find out, by detectives or otherwise, where *Du Bois* now conceals himself (173). From their action it would seem as if they already knew, when receiving our telegram, the bills to be forged, and consequently that there would be no use to trace the shipments.

Mr. Goetz, accompanied by *Mr. Sylvester*, one of the plaintiffs' attorneys, hastened on October 29 to Kansas City. From Chicago

they sought to procure, through the chief of police, the arrest of the forger. But the prominent forger was allowed to escape (168–169). On Monday they called on *Mr. Chick* at his bank. The conversation, which they there had with Mr. President, was ruled out by the Court, like many other things that were apt to show this little confidence game in its true aspect (170, 268).

CONVERSION OF A GENUINE BILL OF LADING.

Another collateral circumstance tends to illustrate the character of these transactions. When *Albrecht*, the plaintiff's agent, was at Kansas City, October 28th, *Du Bois* promised he would ship some hides to the plaintiffs the same night. He did so, and sent the bill of lading to *Spengler's* place, where *Albrecht* was stopping, in a letter, addressed to him. It happened that *Albrecht* had left for a couple of days for Lexington. When he returned, the letter was gone (172). On the examination of *McLellan*, it was discovered that this letter came in some unknown way to his hands, after *Du Bois* had absconded; and he, upon *Chick's* urgent solicitations (180), turns over this genuine bill of lading, which belonged to the plaintiffs, to the bank of Kansas City, in order to secure it *for losses on Trostel & Gallun's* drafts, which had come back protested (244–245), (*Chick*, 188–189).

It is true that on subsequent reflection, Mr. President "kindly" concluded to tender this genuine bill to the plaintiffs as a substitute for the forged shipping receipt, attached to the fifth draft (189–190), but the intent "to overreach" is not at all rebutted or to any extent neutralized.

WHAT THE BANK BOOKS SHOW.

On November first, the accounts between *Du Bois* and the bank were balanced, and all that *Du Bois* apparently owed was $694.00 (263). Subsequently the account was further charged with certain drafts on *Trostel & Gallun*, which came back protested (267); the last deposit item of $2,004.60 represents the *fifth* draft on *Goetz & Luening*, because protested for non-payment (*Chick*, 267).

On the same day, Nov. 7th, an unexplained deposit or credit appears on the books of $7,554.44, which *balances the account in full*.

Query: Why then is it (this fifth draft being evidently made good, either by *Du Bois* or *McLellan*,) that the bank shall now be entitled to receive payment in three different forms?

1st. From *Du Bois*, as per bank books;

2nd. By a genuine shipment, belonging to these plaintiffs, for which the bank paid nothing;

3d. By an additional judgment against us for $2,380.26?

Such are the facts.

ASSIGNMENT OF ERRORS.

The Court erred in rejecting the following evidence (more at length quoted and referred to in printed argument hereafter):

I. The history of the Buffalo forgery, as published in the Kansas newspapers (280–291, 271–280).

II. Knowledge on part of the Bank of previous forgeries (178).

III. Knowledge as before (181).

IV. Knowledge and public notoriety (207.)

V. Du Bois' bad reputation (210).

VI. Gross carelessness to deal with Du Bois as with ordinary persons (210).

VII. Degree of care required in dealing with Du Bois (214).

VIII. His general standing in business circles (215, 217, 223, 226, 227, 229).

IX. Admission of Mr. Chick in his interview with Sylvester and Goetz, to effect that he knew Du Bois' bad character; that he refused his custom at first for that reason; that Du Bois was finally admitted to banking business under certain restrictions and that shortly before the plaintiffs' grievances the Bank itself became heavily involved by similar frauds (170, 268).

X. Strange conduct of the banking officers, when informed of the forgeries and their utter apparent indifference when Du Bois absconded (168–169).

XI. The experience of other banks (208–210).

The Court also erred in admitting the following evidence:

XII. Usage of banks in abstaining from inquiry, when paper is protested (185).

XIII. Improper latitude on cross-examination (264–265).

XIV. The Court further erred in granting a non-suit and directing the jury to return a verdict on both issues in favor of the Bank (269–270).

ARGUMENT.

As we understand the views of the learned District Judge, who presided at the trial, he proceeded upon the theory that,

> "The inquiry ought not to be extended into questions of general reputation, or into other frauds committed by Du Bois; that the court could not go back of the particular transaction itself, and that it became necessary to show that the bank had notice or knowledge of the particular fraud, that invalidated this paper—knowledge or notice of facts, which reach to the validity of these particular drafts and bills of lading."

While such were the views of the court, apprehensive that a different ruling might possibly strike an unwarranted blow at the free circulation of commercial paper, it was but natural that the plaintiff's case should first be stripped (I—IX) of most evidence, relating to prior occurrences, which tended to illustrate the drawer's disposition to forge such paper, and the unenviable notoriety, which he had gained in the community in consequence thereof. Next, that the court should grant, on cross-examination, the bank every possible opportunity to exculpate itself of all complicity and knowledge, testifying to its unshaken and unbounded faith (XII, XIII) in the integrity of one, whom the whole community justly looked upon with grave suspicion; and lastly, wind up by directing a peremptory verdict for the Bank.

Having first "purged" the record of most of the circumstances, from which a jury might properly infer *mala fides* on part of the Bank, notwithstanding the feigned ignorance of its Mr. President, the high regard of the court below for a free and untainted circulation of commercial paper, finally culminated in assuming the very province of the jury, deciding the questions of fact, and finding from the evidence as admitted, that the Bank was utterly ignorant of what transpired, and proved what it assumed to be: a purchaser in good faith.

We supposed the rule in this honorable court to be well settled, that:

> "When parties do not waive the right of trial by jury, the court may not substitute itself for the jury, by passing upon the effect of the evidence, finding the facts, and rendering judgment thereon."
>
> Baylis vs. Traveler's Ins. Co., 113 U. S., 316.

But before we proceed to a discussion of this, the most essential error, we will take a cursory review of the rulings on the trial.

REJECTING EVIDENCE.

I.

The court ruled out the published history of the Buffalo forgery. It was made to appear that these articles attracted the widest attention. They were not of the ordinary character of daily news—not stated by way of rumor—nothing was left to inference; but facts, figures, names—were charged and reiterated—over and over again (283). The card from Mr. DuBois at page 284 in no way placed the facts themselves in issue, so that public sentiment became well expressed in the closing paragraph of the *Times:*

> "Hereafter no such bills will be received and accepted as good, by any bank in the city, unless the fact of their genuineness is sure beyond all peradventure." (283).—*Kansas City Daily Times.*

These articles were in every one's mouth. President Chick at first felt inclined to deny knowledge of them (188), but afterwards admitted having read the papers (181). In fact, as we have seen heretofore, he knew of this Buffalo matter from Mr. Geisler himself, before even Mr. White heard of it (180), and he went to the bank to offer his assistance, believing they "got stuck largely" (180).

But, however, the information may have come to him, Mr. Chick knew all about this Buffalo "escapade".

> Q. "Was not, as early as the year 1879, DuBois' reputation in point of business, and especially in point of honest dealing, bad?
>
> A. I never heard anything against his reputation, *except this Buffalo transaction*" (181).

Now, unless it be true, as a legal proposition, that a bank may deal with one, known to be in the habit of occasionally forging commercial paper, precisely as if dealing with individuals of unblemished character, then it would seem to need no argument that this species of evidence should have been admitted.

Can a bank, more so than individuals, deal with one, known to be a rascal, in the *ordinary course of business?* Does the fact of a

bad reputation, based on former forgeries, enter into the question of good faith, when discounting the forger's paper? Is there anything in an honest name and unblemished character?

It must be borne in mind that these articles, and the facts therein disclosed, formed the very basis for *a universal change in public sentiment*, and exerted a most radical influence upon the business community, justly prompting them to watch with suspicion thenceforth every movement of the delinquent party. The Court, however, deemed the newspaper disclosures to be utterly irrelevant, either as part of the *res gesta*, or in their final bearing. The same were consequently ruled out (222, 225) and the case then proceeded, as if these earlier forgeries of 1879 had never become public, or been brought to the attention of the Bank.

The extreme disposition of the court, to uphold the good faith of the Bank, found further expression in the following rulings on the trial.

II.

From the examination of Mr. Chick.

Q. You knew that the newspapers in 1879 had published long articles about him (DuBois), and his forging bills of lading, which he had discounted with drafts attached, to other banks in Kansas City—did you not?

Objected to as irrelevant and immaterial.

Counsel for plaintiffs states that he expects to show by this witness that he did not deal with DuBois in the ordinary course of business, and that he could not have taken this paper in the ordinary course of business—that is, the ordinary course of banking business.

Objection sustained. Exception (178).

III.

Q. Did you not by general reputation at that time ascertain that it was a claim of $20,000 or thereabouts, which had grown out of forging bills of lading by DuBois?

Objection sustained. Exception (181).

IV.

From the examination of Mr. White.

Q. Do you remember of reading anything in the papers in relation to that transaction?

Objected to, because the papers themselves are the best evidence. Sustained. Exception (207).

Q. After that came out, was it not a matter of public notoriety and talk about town that DuBois had been guilty of crookedness?

Objection sustained. Exception (207).

V.

Q. Was it not generally known among business men that DuBois was considered crooked?

Objection sustained. Exception (210).

VI.

Q. From your knowledge of the reputation of DuBois, would you not consider it carelessness—gross carelessness, to deal with him, as you would with an ordinary business man?

Objected to. Sustained. Exception (210).

VII.

Q. Would you not,—from your knowledge of DuBois and this Buffalo transaction, and what you had heard about these forgeries, would you not deem it prudent to look into the genuineness of bills of lading, that came from him?

Objection sustained. Exception (214).

VIII.

To substantially the same effect are the rulings and exceptions at folios 215, 217, 223, 225, 227, 229. Having in the first instance excluded evidence of the notoriety of these earlier forgeries, and of their effect upon DuBois' reputation for honest dealing, it was but natural that the plaintiffs' witnesses should not thereafter be permitted to testify to anything further, from which the jury might infer that DuBois' reputation had not changed to the better.

IX.

Direct evidence, tending to impeach the good faith of the banking officers, met with the same ruling.

Referring to a deposition on file in this case, the following testimony occurs at page 187:

> Q. Did you not state, Mr. Chick, to us, (meaning Mr. Sylvester, one of plaintiffs' counsel) in that interview, that "when DuBois first came to me to open an account, I utterly refused to have anything to do with him, because I regarded him as slippery and unreliable?"
>
> A. I don't remember of that; I may have said so. . . . Question and answer being then read from the deposition, the witness continued: "I presume that is the question and the answer that I made at that time."
>
> Q. Do you deny that you said it?
>
> A. I don't deny it; no sir. I don't think I used that language though.
>
> I think that is "it." I don't deny it; no sir. I don't think I used that language. That is what I said.

With this qualified and guarded admission upon the record, the plaintiffs sought to prove by Geo. Sylvester, (170) and by A. W. Goetz, Jr. (268), that at this interview between them and the president of the Bank, on the morning of October 31, 1881, while none of the shipments had as yet arrived, and while there were still continued business dealings and relations between DuBois, the Bank and plaintiffs, relating to and growing out of some of these draft and acceptances, Mr. Chick stated that

> "he knew DuBois to be unscrupulous, but shrewd; that when he first came to open an account with the bank, he, the president, had refused to receive him as a customer on account of his bad reputation in business matters; that he afterwards accepted him on the special request of one Slavens, a co-director and stockholder in the bank, and on the agreement that the business should remain confined to the discounting of drafts, accompanied by collaterals. That the bank ever since had done only a discount business with DuBois, but became itself at one time largely involved in certain wood transactions with DuBois as early as July or August, 1881, and *that they would have broken off their relations with him before, if it had not been that this wood matter remained unsettled.*"

The Court thought the question was controlled by Packet Co. vs. Clough, 20 Wall., 528, and consequently ruled out the whole testimony (269).

This ruling, we think, was clearly erroneous. In Packet Co. vs. Clough, the admission of the captain was held to be *outside* of the scope of his employment. Then again: that the narrative of a past occurrence, *if it had no tendency to determine the nature, quality, or character of the act done or left undone,* is not within the rule laid down in Story on Agency Sec. 134.

We are not inclined to detract to the slightest extent from the doctrine of Packet Co. vs. Clough. The case at bar, however, presents an entirely different question. Mr. Justice Story specially calls attention to the fact that there is a wide distinction in this regard between general agents and limited or special agents (Sec. 133, 5 Ed. Story on Agency).—The former is appointed to act in his principal's affairs generally, and the latter to act concerning some particular object (Sec. 126). The authority of the one is general and continuous, while as to the latter the agency is limited, and consequently outside acts are mere nullities, as far as the principal is concerned.

But Mr. Chick, the president and head of this banking corporation, the chief executive officer in charge of this very business, cannot well be said to have acted outside the scope of his employment, when discussing with us the relations existing between DuBois, these plaintiffs and the bank, at a time when the accounts were not as yet closed; when the bank books, relating to these same transactions, remained unbalanced (263), and when the fifth draft, now in controversy, though accepted, had not yet matured. Everything in the case at bar seems to bring this declaration and admission within the rule laid down by Mr. Justice Story, viz: General Agency—*res gestæ*—continuous authority and control.

Yea, it appears that, even *after* this interview, a certain genuine bill of lading, belonging to us, surreptitiously found its way into the hands of Mr. President, and became substituted for a forged one, that was originally attached to the unpaid fifth draft (Chick, 188—189).

The case at bar cannot well be distinguished from Burnside vs. Grand Trunk R. R., 47 N. H., 554, where it is said:

> "If the agent's authority over the matter has *not* ceased; if it still remains under his control for *any* purpose, his admissions in reference to it may be given in evidence against his principal." ibi.

An interesting collection of cases on this question will be found in II. Best on Evidence, 671, Note, 1st Am. Ed.

But we need not search for the true rule in other courts. If any room were left for discussion, it would certainly be covered by the opinion of Mr. Justice Woods in a case lately decided:

Xenia Bank vs. Stewart, 114 U. S., 224.

> "The declaration made by an officer or agent of a corporation, in response to timely inquiries properly addressed to him, and relating to matters under his charge, in respect to which he is in the usual course of business to give information, may be given in evidence against the corporation." ibi.

If a conversation with a cashier, two months after payment of the note, is admissible against the corporation, what reason is there for ruling out the declarations of the president of a bank, explanatory of his personal knowledge and official action, almost simultaneously with the occurrence of the transactions themselves?

X.

The court also ruled out all evidence as to plaintiffs' efforts in procuring DuBois' arrest, when the forgery was discovered. (168–169).

We will concede that such evidence, considered by itself, might perhaps not have a direct bearing on the main issue; but it ought not to be left out of mind that the complainant, aside from the question of good faith, also charged the bank with gross negligence: purposely closing its eyes to the manifold evil practices and machinations of this dangerous, but valuable customer, and allowing DuBois to escape from the hands of Justice, when the discovery of his fraud could not any longer be withheld.

The evidence is circumstantial, but sufficiently clear and explicit to warrant a jury in inferring *malâ fides*, if not complicity.

A telegram was sent on the eve of October 28:

> "Accepted and paid all your drafts promptly, but no hides in sight. Closely trace and answer quickly" (166).

But the bank never answered; nor were any efforts made to trace either the shipments, or the forger himself (173–174). The officers seem to be in no way surprised at the disclosure. They never took any pains to ascertain DuBois' whereabouts. They quietly balance his account immediately after October 31, 1881, so as to show nothing due from DuBois (199); even the Boston wool transaction is withheld upon the face of the accounts (264). But they do not shrink back from possessing themselves of a genuine bill of lading, which DuBois had turned over to Albrecht, in order to make good, in part at least, his previous defalcations to these plaintiffs.

XI.

Another ruling of the court greatly prejudiced our side. We sought to prove by the Cashier of the Kansas City Savings Association, C. J. White:

(a.) That when the Buffalo forgeries occurred in 1879, not only DuBois' bank, but certain eastern commission merchants, who had become thoroughly disgusted, refused to transact any longer business with him, unless one McLellan assume charge of office matters, and sign all drafts.

(b.) That ever since that time the reputation of DuBois for honest dealing was exceedingly bad.

(c.) That he was notoriously slippery, and generally so considered.

All of which testimony was ruled out (208—210).

ADMITTING EVIDENCE.

XII.

The adverse disposition of the learned District Judge is further illustrated by his ruling at page 185, as to which we shall let the record speak without further comment.

It was made to appear from the examination of Mr. Chick, that a large number of DuBois' drafts, although accompanied by bills

of lading, had lately come back to the bank protested, and the plaintiffs endeavored to establish on such examination, that this Bank

> Either *knew the reason* for such numerous protests, viz: the fact that the bills of lading were unreliable and often forged,
>
> Or, that the Bank *purposely remained ignorant* of the true facts, relying on the shrewdness of DuBois, when caught, to adjust difficulties promptly.

With this view, the question at page 185 was put, but the witness, against the objection of plaintiffs' counsel, was permitted to answer the same by testifying to a "*usage of banks*" in *abstaining* from proper inquiry, and closing their eyes to the wickedness of customers generally.

XIII.

While thus confining the plaintiffs in their proofs (as we have seen above) by the strictest rules of evidence, the utmost liberality was exhibited in cross-examination (264, 265).

NON-SUIT DIRECTING A VERDICT.

XIV.

Such was the condition of the record when the plaintiffs rested, and the court—deeming the case to be ruled by

> Hoffman vs. Bank of Milwaukee, 12 Wall., 181.
>
> Goodman vs. Simonds, 20 How., 343,

directed a peremptory verdict on both issues.

The erroneous character of this ruling can best be illustrated by first referring to a few propositions of law, which we believe to arise upon the facts of this case:—avoiding (as much as possible) extended discussion.

The following principles we hold to be elementary, needing no citations in support thereof.

Moneys had and received.

An action of *assumpsit*, for money had and received, is an *equitable* remedy, that lies in favor of one person against another, when

that other person has received money either from the plaintiff himself, or third persons, under such circumstances, that in equity and good conscience he ought not to retain the same, and which *ex aequo et bono* belongs to the plaintiff.

This class of actions is very comprehensive—a characteristic outflow of "the growth of the common law." No privity of contract is necessary to be shown: the plaintiff's right to the money being established, and the defendant being shown to have received it under such circumstances, that he ought not to retain it, the law implies a promise to pay it to the party that ought to have it.

Even torts may be waived, and an action brought for money had and received.

Familiar instances are: Payments under mistake, duress, compulsion, fraud, deceit, upon forged instruments, on illegal contracts, rescinded or abandoned contracts, judgments afterwards reversed, illegal taxes, etc.

As to payments without consideration, or followed by a failure of title, illustrations are numerous:

> Where money is paid to a person under a contract, by which the person paying expects to receive something of value, and it proves valueless, or where it is paid to secure a certain right or privilege, and it proves utterly inoperative for such purpose, it may be recovered back; as where a person pays for an insurance that never attaches; or where a slave already free, pays to his master to secure his freedom; or money is paid to a municipal corporation for a license, which it had no power to grant.

The recovery in such cases (as, in the absence of duress, coercion, or fraud, the payment is originally voluntary,) proceeds upon the ground that there is a *failure* of consideration, and not that the money was paid *without* consideration.

Upon the same principle rest the cases for *failure of title*. Where money is paid for personal property, in ignorance of the facts, the law implies a warranty of title, and if it turns out that the vendor had, in fact, no title, or because he fails to do that, which he was bound to do to perfect it, the money may be recovered back.

Philipps vs. Hudson, 31 N. J. Law, 143.

Bills of Lading.

The law relating to bills of lading, like that of warehouse receipts, is of comparatively modern origin.

Bills of lading are both receipts and contracts—written agreements, by which carriers undertake to convey and deliver certain goods to a designated person and place.

The authority of carriers' agents to issue bills of lading is subject to this important limitation, of which the public is held to have notice: They are authorized to issue bills of lading only for goods actually received.

14 Cent. L. J., 22.

"A bill of lading is a muniment of title—a symbol of ownership of the goods covered by it—a representative of those goods."

Shaw vs. Railroad Co., 101 U. S., 557.

"*When the bill of lading consigns the goods, subject to the order of the consignor, or some person other than the consignee, then the consignor or other person named, and not the consignee, is presumptively the owner of the goods.*"

Dows vs. Nat. Exchange Bank, 91 U. S., 618.

"A transfer by whosoever is designated in it as owner, whether accompanied by indorsement or not, is operative as a symbolic delivery of the goods it represents to the transferee, especially where the transferee has made advances, relying upon the goods for security."

Cayuga County Bank vs. Daniels, 47 N. Y., 631.

Nat. Bank vs. Merch. Bank, 91 U. S., 92.

In England, and most of the States, these bills of lading are now negotiable by indorsement and delivery.

Melior est conditio defendentis.

This rule is also familiar:—If a loss must fall upon two innocent persons, both parties being free from blame, and justice being thus in equilibrio, the above principle will turn the scale. But,

"We may lay it down," says Ashhurst, J., "as a *broad, general principle*, that *wherever one of two innocent persons*

must suffer by the acts of a third, *he who has enabled such third person to occasion the loss*, must sustain it."

§ 715 Broom's Legal Maxims.

Mutual Mistake.

"Money paid by one party to another, through a mutual mistake of facts, in respect to which both are equally bound to inquire, may be recovered back."

Bank of Commerce vs. Union Bank, 3 Const., 230.
Canal Bank vs. Bank of Albany, 1 Hill, 287.

Now apply these familiar rules for a moment to the facts in the case at bar—ignoring, for the present, all other questions of *bona* or *mala fides*, as applicable to commercial paper. Conceding (if you please, for purposes of this proposition) that plaintiffs and defendants were, in this particular instance, equally unconscious of DuBois' fraud. How, then, does the record present itself?

The plaintiffs live at a distance of 1,000 miles from DuBois' home; they have no reason to suspect his integrity. They contract with DuBois for *consignments of certain merchandise* to be sold by them on commission, and agree to advance up to two-thirds of estimated value of shipments—drafts for such amount to be attached to bills of lading.

The shipping receipts constitute the essence of the contract. While ordinarily the acceptance of a draft is presumptive evidence of funds to the credit of the drawer, no such presumption could possibly arise in this case.

With due regard for what the court said in Hoffman vs. Bank of Milwaukee, as to the relative bearing of draft and bill of lading to each other, the latter being merely collateral security to the draft, we beg to suggest that this presumption of law (and such it may ordinarily, in the absence of evidence to the contrary, be considered) is utterly reversed and rebutted, not only by modern commercial usage, but by the evidence of the parties to this case. The *delivery of a valid bill of lading*, securing title and possession to the merchandise thereby represented, is *the main and primary con-*

sideration—a draft for a portion of its value being but an incident thereto, because the most convenient *form of transmission*. And it seems to us clear, from the evidence, that in this—as in many other instances—commercial usage and understanding have, of late years, outgrown to a certain extent the interpretation of our courts (who are inclined to treat the draft as the essence, and the shipment but as collateral thereto), and that our jurists will eventually be forced to adopt this commercial understanding, unless prepared to deviate from the fundamental and salutory maxim, which requires us to search *for the intention of the contracting parties*, and then to give effect to the agreement accordingly.

Whenever any one of the witnesses alludes to this method of business, we find the bill of lading, or warehouse receipt, to be discounted, and not the draft. (Ante).

This hon. court, in fact, has already conceded in National Bank vs. Merchants' Bank, 91 U. S., page 96, that

> "It may properly be inferred from a time draft, accompanied by a bill of lading, that it does not evidence a credit sale, but *a request for advances on the credit of the consignment*; that the *acceptance is not asked on the credit of the drawer of the draft, but on the faith of the consignment*."

We have already alluded to the fact that the contract, as originally made, was one exclusively between DuBois and these plaintiffs. But, instead of consigning the goods directly to the plaintiffs, as agreed, DuBois communicates this agreement, (showing the original letters, Chick. 193) to the Bank, and thereupon *the Bank causes itself to become substituted as owner and consignee of the goods*. As we have seen before, they refused to do business with DuBois in any other mode.—A bill of lading is forged, *payable to the shipper's order*, by him *endorsed in blank, and delivered to the defendant*. The bank makes no inquiries into the facts or genuineness, but, *to all apparent purposes then the owner of the property itself*, it places its *official stamp or certificate* not only on the back of the draft, but also on the invoice, and the *three* papers, *so endorsed*, are presented to the plaintiffs for acceptance and payment.

Who is there to say that this endorsement had no meaning, and did not tend towards certain results.

> "The endorsement of DuBois on the bill of lading in blank, and the endorsement of the Bank on the invoice or value bill,

> thereunto attached, influenced me (Luening) to think the property belonged to the Bank of Kansas City, and I was dealing with the Bank, and upon our acceptance and payment of the draft, the property, mentioned in the bill of lading and invoice, would be transferred from the Bank to us.—I thought that the bill of lading, being in the shipper's name, and endorsed by him in blank, and transferred to the Bank of Kansas City, the signature of the Bank on the value bill *guaranteed the goods* in the bill of lading." (158–159).

When the second draft arrived, the *bill of lading* appeared to be endorsed by the bank—thus presenting a still stronger case upon the facts and the law. See also as to endorsement upon the others. (Ante).

Is this view of the transaction, as it then presented itself to the plaintiffs, at variance with the legal relations, established by the writings?

Does it lie in the mouth of the Bank to say these endorsements did not mean anything, after they misled others to act thereupon?

The invoice or value bill proves an indispensible part of each shipment, in view of the fact that the bill of lading is general in its terms—the weight being subject to correction, (96)—and such invoices are intended to make certain, what otherwise would be open to conjecture.

Now, without attempting at present to impugn the motives of the defendant, for substituting itself as apparent owner, and then endorsing as above, it is enough for our purposes to know:

> First.—That the Bank had previous knowledge of DuBois' real character, his reputation, and *disposition to forge* such bills.
>
> Second.—That, after refusing his patronage at first, the president became persuaded, by the interference of mutual friends, to admit him to the Bank on a limited basis. (186).
>
> Third.—That they would not discount or give credit to him in the ordinary course of business, but confined their transactions to "advances on shipments" (177); the bills of lading constituted the sole source of credit. (239).
>
> Fourth.—That the very reason for not sending or consigning the shipments to the plaintiffs directly, was because the Bank wanted to hold, in the bills of lading, *title* to stock (160).

Fifth.—That the previous course of business at the Bank had thoroughly disgusted its president and cashier, and that they would have broken off all relations, if it had not been for the unsettled Boston forgery.

Sixth.—That DuBois' reputation for integrity was so low, that *no one at the other banks would have taken his paper*, although accompanied by bills of lading, without first inquiring into their genuineness.

Seventh.—That this Bank had equal knowledge and opportunities for information, within easy and immediate reach, so that, on slight inquiry, they might have ascertained the forgery.

However, they abstain not only from all inquiry, but they—themselves the apparent owner of the goods—add their official stamp to invoices and shipping receipts, thereby giving color to the transaction, and throwing subsequent purchasers entirely of their guard.

Does, under such circumstances, this equitable remedy—"An action for moneys had and received," apply? Is there a *failure of title?* An implied warranty that, on acceptance and payment of this draft, the bank (which owns and transfers the bill of lading and goods thereby represented,) will cause the title to be made good in its purchaser?

Concede (if you please) both parties to be equally innocent as to the original fraud, who enabled DuBois to carry it out? Upon whom shall the loss fall?—

Upon that innocent, misled victim, living 1000 miles away, or upon the bank, which, with its eyes wide open, fostered and nourished the prominent rascal, when every other bank at Kansas City, and decent business sentiment at home, refused to have anything to do with him at all?

The solution of this question presents to us no difficulty. We need no parallel *adjudicated* cases. A more frequent recurrence to general principles, and a little original reasoning will best tend to give effect to "*l'esprit de loi.*" This is in no sense a case of "*In æquali jure*" or "*Melior est conditio detendentis.*" The bank by gross carelessness—if not by its affirmative act—has caused this loss to occur, and it now ought to assume the consequences.

> thereunto attached, influenced me (Luening) to think the property belonged to the Bank of Kansas City, and I was dealing with the Bank, and upon our acceptance and payment of the draft, the property, mentioned in the bill of lading and invoice, would be transferred from the Bank to us.—I thought that the bill of lading, being in the shipper's name, and endorsed by him in blank, and transferred to the Bank of Kansas City, the signature of the Bank on the value bill *guaranteed the goods* in the bill of lading." (158–159).

When the second draft arrived, the *bill of lading* appeared to be endorsed by the bank—thus presenting a still stronger case upon the facts and the law. See also as to endorsement upon the others. (Ante).

Is this view of the transaction, as it then presented itself to the plaintiffs, at variance with the legal relations, established by the writings?

Does it lie in the mouth of the Bank to say these endorsements did not mean anything, after they misled others to act thereupon?

The invoice or value bill proves an indispensible part of each shipment, in view of the fact that the bill of lading is general in its terms—the weight being subject to correction, (96)—and such invoices are intended to make certain, what otherwise would be open to conjecture.

Now, without attempting at present to impugn the motives of the defendant, for substituting itself as apparent owner, and then endorsing as above, it is enough for our purposes to know:

> First.—That the Bank had previous knowledge of DuBois' real character, his reputation, and *disposition to forge* such bills.
>
> Second.—That, after refusing his patronage at first, the president became persuaded, by the interference of mutual friends, to admit him to the Bank on a limited basis. (186).
>
> Third.—That they would not discount or give credit to him in the ordinary course of business, but confined their transactions to "advances on shipments" (177); the bills of lading constituted the sole source of credit. (239).
>
> Fourth.—That the very reason for not sending or consigning the shipments to the plaintiffs directly, was because the Bank wanted to hold, in the bills of lading, *title* to stock (160).

Fifth.—That the previous course of business at the Bank had thoroughly disgusted its president and cashier, and that they would have broken off all relations, if it had not been for the unsettled Boston forgery.

Sixth.—That DuBois' reputation for integrity was so low, that *no one at the other banks would have taken his paper*, although accompanied by bills of lading, without first inquiring into their genuineness.

Seventh.—That this Bank had equal knowledge and opportunities for information, within easy and immediate reach, so that, on slight inquiry, they might have ascertained the forgery.

However, they abstain not only from all inquiry, but they—themselves the apparent owner of the goods—add their official stamp to invoices and shipping receipts, thereby giving color to the transaction, and throwing subsequent purchasers entirely of their guard.

Does, under such circumstances, this equitable remedy—"An action for moneys had and received," apply? Is there a *failure of title?* An implied warranty that, on acceptance and payment of this draft, the bank (which owns and transfers the bill of lading and goods thereby represented,) will cause the title to be made good in its purchaser?

Concede (if you please) both parties to be equally innocent as to the original fraud, who enabled DuBois to carry it out? Upon whom shall the loss fall?—

Upon that innocent, misled victim, living 1000 miles away, or upon the bank, which, with its eyes wide open, fostered and nourished the prominent rascal, when every other bank at Kansas City, and decent business sentiment at home, refused to have anything to do with him at all?

The solution of this question presents to us no difficulty. We need no parallel *adjudicated* cases. A more frequent recurrence to general principles, and a little original reasoning will best tend to give effect to "*l'esprit de loi.*" This is in no sense a case of "*In æquali jure*" or "*Melior est conditio defendentis.*" The bank by gross carelessness—if not by its affirmative act—has caused this loss to occur, and it now ought to assume the consequences.

As to the nature of banking corporations.

Yea, under a system of jurisprudence like ours,—a common law, constantly growing, (the *past* reasoning not only, but the *continuous outflow* of a warm and enlightened bench), we feel even encouraged to charge this bank, upon the facts of the case, with a gross *disregard of duty*, which it owed not only to ourselves, but *to the public at large*.

Although the stock of a bank is owned by private persons, it is erected by the sanction of public authority, and its operations and objects *partake of a public nature*.

> Like natural persons, they are liable for the negligence of their officers, by which others sustain a loss; and it is a general rule, that a bank is bound by the same obligations, moral and legal, when the rights of third parties are concerned, that apply to the case of an individual, unless explicitly exempted by law.
>
> Lowry vs. Commercial Bank, Taney, 310.
>
> The general doctrine with reference to negligence, applies as well to corporations as to natural persons, that is: for all injuries to persons, resulting from the negligence of another, and to which the party has not by his own act or negligence contributed, the injured party may recover such damages as directly and naturally or necessarily flow from the negligence.
>
> Field on Corp., Sec. 336.
>
> Potter on Corp., Sec. 114.

The same principle is applicable to cases of fraud—actual or constructive. And it is to be borne in mind that

> "Fraud in law is frequently defined to be any trick or artifice, employed by one person to induce another to fall into an error, or to detain him in it, so that he makes an agreement contrary to his interest. It may consist not only in misrepresentation, but also in the concealment of a material fact.
>
> Field on Corp., Sec. 320.

Keeping these general and well settled principles in mind, the question may be asked:

Why should, on principles of public policy, these banking corporations (endowed by public authority with extraordinary privileges and franchises, not common to the commercial world at

large), in the interest of trade and commerce generally, not be held *to a higher degree of public duty, proportionate to the confidence manifested on the part of community*, so as to make it obligatory upon them fairly to *discriminate between the honest trader, and one known to them to be a dangerous character*, or shall they be permitted (as in the case at bar) to encourage and foster the machinations of a common rogue, and then, in the end, to throw the consequences of their own folly and disregard of a common duty, upon an unsuspecting public at distant places, by pleading:

Ignorance of defects and equities in the *particular* paper, because (with eyes wide open) they have chosen to discount the same at the counter of the bank?

Modern trading presents enough of iniquity, without sanctioning such practices, for the apparent purpose of upholding the commercial character of negotiable paper.

BONA OR MALA FIDES.

In Hoffman vs. Bank of Milwauke, 12 Wall., 189, it was said that money, paid by the acceptor of a bill of exchange to the payee of the same, is paid in discharge of a legal obligation, and cannot be said to be a payment by mistake, nor without consideration, *unless it be shown:*

> "That the instrument was fraudulent in its inception; or that the consideration was illegal; or that the facts and circumstances, which impeach the transaction as between the acceptor and drawer, were known to the payee at the time he became the holder of the instrument."

The same doctrine found expression in,

U. S. vs. Bank of Metropolis, 15 Peters, 393.

> "Unless it be shown that the payee had knowledge of the fraudulent acts of the drawer, before he paid such value and became the holder of the instrument."

However, before we proceed to a discussion of this proposition, it may be well to consider for a moment, upon whom lies the

Burden of Proof.

> "If the maker or acceptor proves that there was *fraud or illegality* in the inception of the instrument, the owner must

then respond, by showing that he acquired it *bona fide*, for value, in the usual course of business, while current, and under circumstances, which create no presumption that he knew the facts, which impeach its validity."

Bailey vs. Bidwell, 13 Mee. & Wels., 73.
Stewart vs. Lansing, 104 U. S., 509–510.
Daniels on Neg. Inst., Sec. 815. 3 Ed.
Duerson vs. Alsop, 27 Gratt. 248.
Smith vs. Sac County, 11 Wall. 139.
Clark vs. Pease, 41 N. H. 414.

The burden of proof, therefore, *became shifted*, as soon as it was made to appear that the bills of lading were *forged*, and that there was fraud in the inception of the instruments. It then devolved upon the Bank to satisfy the jury, by a preponderance of the evidence, that it became a *bona fide* purchaser—that it acquired this paper for value—in the ordinary course of business—and under circumstances creating no presumption of notice or knowledge.

Further it will be borne in mind that, as to the fifth draft, the Bank appears upon the record as plaintiff. A distinction, therefore, arises upon the evidence, as applied to the two cases, which cannot be well ignored, and is essential in the final consideration of this non-suit.

As to this fifth accepted draft, the rule seems to be clearly settled that

"It is a good *defense on part of the acceptor*, if the jury find from the evidence that the Bank is not a *bona fide* purchaser of said paper, or that it did not take the same in the ordinary course of business, and without notice of the facts, which impeach its validity."

Hoffman vs. Bank, 12 Wall., 181.

What Constitutes Notice or Knowledge.

As to the four drafts, already paid, the true rule as to what constitutes notice or knowledge, is not so easily ascertainable. A number of our courts—prompted by an extreme regard for a free and untainted circulation of commercial paper—have assumed the position that nothing short of *mala fides* or knowledge of the facts and circumstances, impeaching the transaction, will suffice to open

an inquiry into antecedent equities. Yea, the learned District Judge, in the court below, felt constrained to rule that the whole evidence ought to be confined to direct proof bearing upon the *particular* paper or transaction, and that with reference to all of these drafts (without discrimination) the Bank must be shown to have had either *actual knowledge* that they were forgeries, or that it was *wilfully ignorant* of the fact that they were forged. In other words: *Nothing short of the Bank's participation in DuBois' fraudulent machinations would destroy its bona fide character.*

In view of the facts presented in the case at bar, we do not deem it necessary to go into extended argument, as to what should be the *exact degree* of knowledge. *We have no doubt that* upon the evidence, *the finding of the jury would have been in our favor in any aspect of the law.* But it may be of interest, slightly to examine into the leading cases on this subject.

Oscillating Decisions.

It was laid down at an early day, in Solomons vs. Bank of England, 13 East., 135, that

> "there might be on the part of a person, taking negotiable paper, such negligence, as would satisfy any reasonable man, that the party must or *ought to have suspected* that the dealing, in which he was engaged, was tainted by fraud."

This doctrine, after extended judicial consideration, culminated in 1824 in the rule of

Gill vs. Cubit, 4 Barn. & Cress., 466.

> "The holder of a negotiable instrument, who has taken it *without reasonable caution*, and under circumstances, which *ought to have excited the suspicion of a careful and prudent man*, must be held to have taken it subject to all the defenses of prior parties."

The conclusion thus arrived at in Gill vs. Cubit had been anticipated in some of our American Courts (People vs. Howell, 4 John. 296), but it remained for the clear and lucid reasoning of that case to establish the rule, which thenceforth rapidly met with the favor of our bench and bar.

We are aware of the attempts to throw doubt upon the soundness of the rule as thus announced. We have especially in mind Uther vs. Rich, 10 Ad. & E., 784. But again, many years later,

we find the rule of Gill vs. Cubit restated with all its force and reasoning, in:

Hatch vs. Searles, 31 Eng. L. & Eq., 219.

And in a very late case, decided in 1878, by the House of Lords.

Jones vs. Gordon, 2 L. R. App. Cases, 616.

where it is said that:

> "A person, who takes a bill under circumstances, *calculated to excite suspicion, and having the means of knowledge, wilfully abstains from making any inquiries*, must be considered as a holder with notice of the fraud, if any exists."

See also, In re Carew, 31 Beav., 39.

Hoare vs. Dresser, 7 H. L. Cases, 290.

The same doctrine will be found laid down in

Hamilton vs. Vought, 34 N. J. Law, 187.

Edwards vs. Thomas, 66 Mo., 485.

Story on Prom. Notes, Sec. 197, 4 Ed.

Modern tendency—true rule.

And although, from a majority of the American decisions, it seems to be deducible that nothing short of *mala fides* will ordinarily defeat the title of a purchaser of negotiable paper (a rule intended to prevent possible injustice, but in point of fact *opening the door wide to fraud*, because parties may shield themselves behind professions of ignorance, while testifying in their own behalf, and still be fostering iniquity on part of others), still this question is by no means finally settled.

Mr. Redfield, in his notes to Swift vs. Tyson, in Redfield & Bigelow's leading cases on bills and notes, P. 216, gives expression to a coming change in those courts, which uphold the latter doctrine, when he says:

> "We should not be surprised to see the pendulum of judicial opinion swing back more and more in that direction, until we reach *the old equitable ground of notice, sufficient to put the party upon inquiry*, the same by which all our other legal and equitable rights are considered as sufficiently protected, and which might be sufficient for the holders of negotiable paper, were it not considered specially sacred."

THE PRINCIPLES, WHICH WE CONTEND FOR.

However, for purposes of present argument, in view of the facts in the case at bar, we may be disposed to concede that, generally speaking, mere negligence on part of the purchaser is not sufficient to defeat his title. Yea, that even proof of a suspicion, or knowledge of circumstances, which might excite a suspicion in the mind of a prudent man, are *not in themselves adequate to establish bad faith*. How then does this case present itself?

Gross negligence, says Daniels, Sec. 774, 3 ed., may be *evidence* to show *mala fides*, and as such be admissible, but it does not amount to *proof* of *mala fides*, and consequently is not sufficient to deprive the holder of his right to recovery. This is assuming the law to go as far, as any court has ever assumed to define it.

"*But express notice of the defect is not necessary.*

Angel vs. N. W. Life Ins., 92 U. S., 330.

"There may be evidence of the infirmity of the paper, apparent on its face, or such indications as to put the purchaser upon inquiry. And in such cases, *constructive* notice is held sufficient, upon the ground that, *when a party is about to perform an act, which he has reason to believe may affect the rights of third persons, an inquiry as to the facts is a moral duty, and diligence an act of justice.*" Mr. Justice Clifford, in

Angle vs. N. W. Life Ins., 92 U. S., 330.

Circumstantial Evidence is Admissible.

"Although it is true that notice means knowledge, yet positive and direct testimony of *mala fides* is seldom attainable." Sherwood, C. J., in

Edwards vs. Thomas, 66 Mo., 486.

"The party's opportunities and means of knowledge, his greater or less intimacy with the others, his familiarity with their business and financial affairs, his intelligence and

observation, would in such an inquiry be matters, *proper for the consideration of the jury.* Reasonable cause to know, is evidence, having a tendency and generally a strong tendency to prove that the party in question, did know."

Caroll vs. Hayward, 124 Mass., 120 (122).

Jones vs. Gordon, decided in 1878, by the House of Lords, 2 L. R. App. Cases, 625 (37 L. T. (N. S.) 477) will be found to be a very interesting and instructive case in many aspects. It was there held that,

"Where the proof showed there was both fraud and illegality in the inception of the paper, the *burden was shifted* upon the holder to prove *good faith and value*, and that, if he had acquired it under *circumstances, which suggested doubt* as to its validity, or as to the title of his vendor, and he had the means of knowledge at hand, but *wilfully abstained from inquiry, for fear such inquiry would lead to knowledge of facts*, which would defeat his title, that was evidence of *mala fides*, and he could not recover."

Particular attention is called to the illustrations, cited by Lord Justice Blackburn, in above case.—

"*Notice* and *knowledge* mean not merely express notice, but knowledge, to which the party wilfully shuts his eyes."

May vs. Chapman, 16 Mee. & Wels., 355.

"A wilful and fraudulent absence of inquiry into the circumstances, when they are known to be such as to invite inquiry, will—if the jury think the abstinance from inquiry arose from a suspicion or belief that inquiry would disclose a vice in the bill—amount to general or implied notice."

Byles on Bills, page 1956 Am. Ed.

"Every one must conduct himself honestly, in respect to antecedent parties, when he takes negotiable paper, in order to acquire a title, which will shield him against prior equities. While he is not bound to make inquiries, he must not wilfully shut his eyes to the means of knowledge, which he knows are at hand, as was plainly intimated by Baron Parke, in May vs. Chapman (ante), for the reason that such conduct, whether equivalent to notice or not, would be *pleuary evidence of bad faith.*"

Mr. Justice Clifford in Goodman vs. Simonds, 20 How., 367.

"Thus, although notice or knowledge of defeating circumstances may not be proved, the facts of the case, the relations between the parties, and their method of dealing, may be such, as to show that there was knowledge, or an *intentional and careful avoidance of knowledge*. This, we should say, has the same effect in law as knowledge."

Parsons on Notes and Bills, 259, Vol. 1.

"It is not necessary to show that the party took the paper with *positive knowledge* of the circumstances. It is sufficient to let in the defense, if it be shown that he took the instrument in such a manner as to imply or fairly charge him with knowledge."

2 Edwards on Bills and Notes, Sec. 976, 3d Ed.

"The circumstances mentioned, and others of a kindred character, while inconclusive of themselves, are admissible in evidence; and *fraud established, whether by direct or circumstantial evidence, is fatal to the title of the holder.*"

Knowledge of the specific fraud not necessary.

It is not necessary that a party should know of the *specific* fraud, or know all circumstances of it. If he suspects a fraud, and chose not to ask, lest he should know, he had sufficient notice.

Daniels Neg. Inst., §799, 801, 3 Ed.
Oakley vs. Odeen, 2 Forst. & Finl. R., 656.
Raphael vs. Bank of England, 17 C. B., 161.
Parsons on Bills, 259, Vol. 1.
Byles on Bills, Page 195, 6 Am. Ed.
Story on Bills, 225, §197, 4 Ed.

This doctrine is happily illustrated by Lord J. Blackburne in Jones vs. Gordon (ante), where his Lordship says:

"If he was honestly blundering and careless, and so took a bill of exchange or bank note, when he ought not to have taken it, still he would be entitled to recover. But if the facts and circumstances are such, that the jury, or whoever has to try the question, come to the conclusion that he must have had a *suspicion* that there was *something wrong* and that he refrained from asking questions, not because he was an *honest*

> *blunderer*, or a *stupid* man, but because he thought *in his own secret mind:* I suspect there is something wrong, and if I ask questions, and make further inquiry, it will no longer be my suspecting it, but my knowing it, and then I shall not be able to recover—I think that is *dishonesty*."

We respectfully submit that the rule as to notice or knowledge ought in no instance to be further extended, than in the case last cited.

On one proposition all cases, however, agree, viz: that is peculiarly the

PROVINCE OF THE JURY

to pass upon this question of notice or knowledge. Buller, J., in dealing with this subject, says:

> "If there are any circumstances of fraud in the transaction, I have always left it to the jury, *upon the slightest evidence*, to presume that the endorsee was acquainted with the fraud."
>
> "A careful judge may readily so submit a case under it to a jury, that they can hardly fail to reach under it the right conclusion."
>
> Whether the holder has any knowledge of the equities between prior parties, is peculiarly a question for the jury, taking all circumstances into consideration.
>
> Hickman vs. Jones, 9 Wall. 197.
>
> Jones vs. Gordon, ante.
>
> Where the supposed defect or infirmity appears *on the face of the instrument*, at the time of the transfer, the question, whether a party took it or not, is in general a question of construction, and must be determined by the court as a matter of law. But as to proof of any facts or circumstances, *outside of the instrument itself*, that is a question for the jury.
>
> Goodman vs. Simonds, 20 How., 366, 370.
>
> Andrews vs. Pond, 13 Peters, 65.
>
> Fowler vs. Brantly, 14 Peters, 319.

CONCLUSION.

Applying the above principles to the facts disclosed in the record and bearing in mind that

"*Circumstances frequently outweigh positive testimony.*"
(9 Cranch, 71.)

there can be but little room left for argument on the question of *mala fides.*

Although the president, on cross-examination, was permitted by the court to testify to his good faith, and to assert his utter ignorance of the causes leading to the numerous protests, and of all fraud and iniquity, both at the time of the alleged grievances and for years before, the conclusion is irresistible that himself and associates were not "honest blunderers" within the language of Jones vs. Gordon, but careful and shrewd business men—at all times and occasions wide awake, and well informed. We cannot be led to believe that, what every one in Kansas City knew, should remain foreign to this bank, viz.: that DuBois was desparate, unscrupulous, and inclined to resort to forgeries, whenever opportunity prompted. The bank of Kansas City, alike with the others, had rejected him as late as the spring of 1881, because an undesirable customer, and if he was afterwards permitted to open an account, it was only upon urgent solicitations of friends, and on a limited basis—shipments had to accompany every draft.

But a few months expired, and we find the bank thoroughly disgusted. Although DuBois' business was large, and the exchange counted heavily, all relations would have been broken off, if it were not that the bank itself had become largely involved in the Boston wool transactions, and that an item of $27,000 awaited further adjustment. Consequently the forger had to be further indulged, and every other consideration was made to yield.

From this time on, forgery followed upon forgery, and the feigned ignorance and innocence of the bank prove perfectly abnormal. If its officers abstained from inquiry into the cause for the numerous protests, which were reported, and if Mr. Chick, while in Boston, remained ignorant even of the fact that all but one of the Boston wool shipments were mere fictions, then this astonishing result cannot well be charged to an honest "Usage of

Banks," but is owing to no other cause or reason than that the bank constantly feared "*inquiry would lead to knowledge.*" They consequently shut their eyes and allowed fraud to multiply upon fraud, in utter disregard of that duty, which banking officers, above all others owe to the public.

Can it possibly be, that the law as to commercial paper, and the policy prompting a free, untainted circulation thereof, compels the court, without the slightest qualification:

First.—To rule out all evidence and knowledge of *previous* forgeries;

Second.—To ignore the undisputed fact that the *drawer* of the paper is an *unscrupulous, dangerous character;*

Third.—To exclude all *admissions* on part of the banking officials, as to their knowledge of the forger's previous history and business dealings;—and then in conclusion:

Fourth.—To assume that a general assertion of ignorance and good faith on part of the banking officers, sets all further inquiry into this subject at rest, so that the court may substitute itself for the jury?

Did we not show enough to throw the burden of proof upon the bank? Have they conclusively proved the utter absence of bad faith, the payment of value, a purchase in the ordinary course of business? What caused the bank to substitute itself in place of the consignor?—Why endorse the bills of lading—certify to the correctness of the accompanying invoices?—Was not the railroad agent near at hand, and the means of ascertaining the genuineness of the bills within their easy reach? Did they abstain from inquiry, because eventually they meant to rely upon the general rule of the law, that "suspicion is not equivalent to actual knowledge," and because *fearing that inquiry might lead to facts detrimental to their interests;*—that it was, *therefore, safer not to inquire* and consequently not to know?

Who is there prepared to say that there was nothing in the record to go to the jury?—Is there any redress short of implicating the purchaser of commercial paper by *direct* evidence with the *particular* fraud?

A few remarks, before closing, may not be out of place, in order clearly to distinguish between this case and the authorities cited by respondent.

We have already alluded to the fact that our case is *sui generis*. The line of decisions, cited in opposition (prominent amongst which is Hoffman vs. Bank of Milwaukee, 12 Wall., 181) involved the simple question whether the payee of a draft, having discounted the same in *good faith*, could be charged as for moneys paid under mistake or without consideration, when the *collaterals* attached thereto turned out to be forged—it being conceded that both parties acted in good faith and were *equally innocent*. We have no desire to criticize these cases, but insist that the one at bar presents entirely different propositions.

The cause of action sounds in tort. We maintain that from the evidence it may be fairly inferred by a jury that the bank—wilfully or carelessly—allowed itself to become a party to a fraudulent scheme:

> That it never dealt with DuBois in good faith, because he was necessarily a subject of constant mistrust:—that it never took any of his drafts in the usual course of business, discounting them like commercial paper generally, but that, for evident reasons, it confined its transactions with DuBois to a limited basis, viz.: to advances on shipments,—the bills of lading being the essence of the contract (177), instead of being collateral merely to a draft.

That—with full knowledge of the original agreement—it caused itself to be substituted in the place of the shipper and having become the owner of the bills of lading, it gave color and credence thereto by endorsement of its name upon the invoice, the shipping receipt or both.

> That slight inquiry would have revealed to the bank the fraud intended to be perpetrated, but that—either negligently or intentionally—it added its name on the back of the paper, when it knew that the acceptance and payment of the drafts depended on the value of shipments, and when it had reason to believe such endorsement would be taken and considered, under the circumstances, 'as certifying to the correctness of the documents and lead others to imply that the bank was personally cognizant of the shipment, its correct weight and value.

That the plaintiffs were actually mislead thereby and desisted from further inquiries.

That during all this time the plaintiffs acted in perfect good faith, but that the bank evidently meant to indulge a notorious forger and wilfully shut its eyes to the many similar frauds, which immediately preceded the grievances complained of—thus paving the way to a prolonged system of commercial plunder and contributing by its own acts to the loss in question.

Will this Honorable Court say that upon such facts the laws of this country afford no redress?

Respectfully,

F. W. COTZHAUSEN,

Counsel for Plaintiffs in error.

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119-551

SUPREME COURT OF THE U. S.

OCTOBER TERM, 1886.

No. 63.

AUGUST W. GOETZ, JR., AND AUGUST LUENING,

Plaintiffs in Error.

vs.

THE BANK OF KANSAS CITY,

Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR

FINCHES, LYNDE & MILLER,
MILWAUKEE, WIS.,
Of Counsel.

CRAMER, AIKENS & CRAMER, PRINTERS.

SUPREME COURT OF THE U. S.

AUGUST W. GOETZ, JR., AND
AUGUST F. LUENING,
Plaintiffs in Error,

vs.

THE BANK OF KANSAS CITY,
Defendant in Error.

STATEMENT OF FACTS.

The plaintiffs in error, Goetz and Luening, were co-partners in trade, doing business as commission merchants in the city of Milwaukee.

The defendant in error, the Bank of Kansas City, is a corporation doing a general banking business at the city of Kansas City, Mo.

The action grew out of forged bills of lading, which were issued by one J. N. Du Bois, a commission merchant in Kansas City. Du Bois, at Kansas City, had made arrangements with Goetz and Luening in Milwaukee, that he would consign to them green salt hides, and would draw drafts against the shipments for two-thirds of the value. Goetz and Luening agreed to receive the hides and pay drafts drawn for two thirds of the value, provided bills of lading were attached to the draft. Du Bois drew five drafts on Goetz and Luening, each one being for two-thirds of a pretended shipment; attached forged bills of lading to the drafts, and discounted them at the Bank of Kansas City. The bank placed the proceeds to Du Bois' credit, and he shortly thereafter

checked out the entire amount in the ordinary course of business.

The bank forwarded the drafts, with the bills of lading attached, to its fiscal agent in Milwaukee for collection, and indorsed some of the bills of lading "for collection." Goetz and Luening accepted and paid four of the drafts, amounting in the aggregate to $7,395, and received the bills of lading attached to the drafts.

They accepted a fifth draft for $2,000, which was not paid.

The hides not coming to hand, the matter was investigated, and it was discovered that all five bills of lading were forged, and that Du Bois had, after discounting the drafts, absconded, and his whereabouts have since been unknown.

The Bank of Kansas City demanded that Goetz and Luening pay the fifth accepted draft, and, on refusal, brought an action against them for the amount. Goetz and Luening defended and set up a counterclaim, demanding the re-payment to them of the four drafts which they had previously paid, and, at the same time, commenced an action in the State Court against the Bank of Kansas City to recover the proceeds of the same four drafts, which they had already paid. This latter case was removed to the United States Court, and the two cases consolidated and tried as one, and the trial resulted in a verdict for the Bank of Kansas City, by direction of the Court. A motion for a new trial was argued before the District and Circuit Judge, and refused, and, from the judgment, the plaintiffs in error have taken their writ of error to this Court.

TESTIMONY.

August F. Luening—*Direct*—(Record, fol. 155.) I first made the acquaintance of Du Bois in 1872 or 1873 at Kansas City. * * At that time Du Bois had a very high standing. * * In 1877 or spring of 1878, while I was a member of the firm of Luening & Bautz, commission dealers in hides at Milwaukee, Du Bois shipped us some sheepskins, which we sold for him on commission.

(Fol. 156.) We received a letter from Du Bois dated at Kansas City Oct. 10th, 1881, as follows:

"*Messrs. Goetz & Luening, Milwaukee, Wis.*:—

"GENTLEMEN: I have this day shipped a carload of G. S. (green salt) hides, invoice of which I enclose, and have made sight draft on you at the rate of 6½c per lb., which is ⅔ of the market value as stated in your dispatch of date (9¾c per lb.). Please honor draft. In couple of days I may ship you another carload if I cannot do better here.

"Yours truly, "J. N. DU BOIS,
"Per J. M."

(Fol. 157.) On Oct. 17th I sent Du Bois a letter as follows:

"DEAR SIR: Your 2 bills for hides received. Two drafts presented and paid. Whenever you want to ship us any more hides you must either bill them directly to us or not ship at all.

"Resp'fully, "GOETZ & LUENING."

(Fol. 159.) To that letter we received a telegram in response from Du Bois dated at Kansas City Oct. 19, as follows:

"Letter received. Future ship'ts will be made as you request. "J. N. DU BOIS."

Cross-Examination.

(Fol. 167.) I was well acquainted with Du Bois and had great confidence in his honesty and integrity, and when he wrote us the letters, which I have read in evidence, that he had shipped the property to us I believed it.

I accepted the drafts because the bills of lading were attached, AS AGREED WITH HIM.

George Sylvester (attorney for Goetz & Luening), was asked as to a conversation which he had several days after the last acceptance with Mr. Chick, President of the Bank of Kansas City.

(Fol. 169.) Q. Will you please give us the subject of that conversation?

Objected to.

COURT: I desire counsel to state what he expects to prove,

PLAINTIFF'S COUNSEL: I expect to prove that at this interview * * the president stated he had known Du Bois to be unscrupulous but shrewd; that he [Du Bois] had come there to open an account in the preceding spring; that he, the president, had refused to take him as a customer on account of his bad reputation in business matters. * *

Objection sustained.

Joseph S. Chick, examined for Plaintiffs in Error;

(Fol. 173.) Am President of Bank of Kansas City. I don't know where Du Bois is now. He left Kansas City about the latter part of October, 1881. Have never heard from him since. Have not taken steps to find out, by detectives or anything of that kind, where he is. * * I am told he left on Friday night.

The following telegram

"Oct. 28.—Accepted and paid drafts J. N. Du Bois promptly. No hides in sight. Closely trace and answer quickly. "GOETZ & LUENING."

was received. I think the bank received it on Saturday. The first time I saw it was on Monday morning, Oct. 31.

(Fol. 174.) Q. Why didn't you answer it?

A. I will state, the cashier sent it down to Du Bois. He had no idea of any fraud at the time. It came back, and on Monday morning it was lying on [my] desk when I came into the office. I read the despatch, and I don't think it was five minutes after before Mr. Sylvester and Mr. Goetz came into the office, and I had taken no action on it at that

time. I had no time, until they came in, to answer it. * * I think I did know on Saturday that Du Bois was gone. I did not inform Goetz & Luening of it. *I did not know he had absconded*, or there was any cause to inform any one. *I thought he had gone on business.*

Q. Is it a fact that at this time you also held accepted drafts, accompanied by forged bills of lading, against Trostel & Gallun, leather dealers of this city [Milwaukee]?

(Fol. 175.) A. I do not know whether we did or not at that time or at any other time. It was a fact that outside of this paper against Goetz & Luening, we held some forged bills of lading against other merchants and dealers in the United States, *but we did not know it at that time.* * * These drafts, charged to profit and loss, were not accepted. As to those bills of lading *we had no knowledge* at the time we held them, and until these transactions came to light, *that they were forged.*

I probably saw him [Du Bois] in 1874 for the first time.

(Fol. 176.) Our business with him was principally an exchange business—that is, he would ship a lot of hides or wool; we would cash his drafts on the bill of lading attached, and that was the end of the business.

(Fol. 177.) He would * * check the money out as suited his convenience.

Du Bois was a prominent man in Kansas City.

I knew he had considerable trouble in 1879 *in one instance* —whether on a forged bill of lading or not I do not remember, but he had some trouble.

(Fol. 178.) At that time (Spring of 1881) Du Bois' business reputation was not generally known to me to be bad.

(Fol. 181-2.) Witness testifies that during 1879, 1880 and 1881, Du Bois' business reputation was not bad to his knowledge.

Cross-examined.

(Fol. 192.) Prior to 1881, Du Bois never did any business at our bank, except a single transaction.

(Fol. 194). When we took these drafts we had no knowledge of the financial responsibilities of the drawees, Goetz & Leuning. We did not look them up; relied on the security of the bills of lading; *supposed that the drafts were all right*; at that time we had no knowledge that there was anything fraudulent about the Boston transaction; *Du Bois was a very large dealer in hides and wool.* He was a *prominent citizen and member of the City Council.* He was a *member of the Board of Trade and on its Arbitration Committee.* He was *captain of the military company* that embraced the leading young men of the city, and was considered a public spirited young man.

At that time we had no knowledge that there was anything fraudulent about the Boston transaction.

(Fol. 195.) We did not get a final account [of] sales of this wool from Boston till some time in November, 1881, or even later than that.

(Fol. 196.) I think the business [bank with Du Bois] would run from $25,000 to $100,000 per month.

ARGUMENT.

I.

The indorsement "for collection" of the drafts and accompaning documents was no warranty, express or implied, that the bills of lading were genuine.

The decisions of all the Courts are, that the indorsement of a bill of lading in blank, transfers all title which the indorser had. It vests the ownership of the goods in him.

The Sally Magee, 3 Wall., 451.
Conrad *vs.* Atlantic Ins. Co., 1 Peters, 386.

But an endorsement "for collection," or in blank, is not a warranty of any fact.

See First Nat. Bank *vs.* Reno County Bank, 1 McCrary, 491; *s. c.* 3 Fed. R., 257.

In Sweeny *vs.* Easter, 1 Wall., 166, the indorsement was as follows:

"Pay Sweeny, R. F. & Co., or order, *for collection.*

"SAM'L HARRIS & SONS."

The Court say (p. 173):

"The words 'for collection' evidently had a meaning. That meaning was intended to limit the effect which would have been given to the indorsement without them, and warned the party that, contrary to the purpose of a general or blank indorsement, this was not intended to transfer the ownership of the note, or its proceeds * * (p. 174). The defendants could not have recovered of Harris & Sons on that indorsement, if the notes had been protested in their hands."

It will be noticed that this case involved the consideration of the indorsement of certain *negotiable notes.* If the defendants were not liable on such an indorsement of negotiable instruments, how much less would the defendants in error here be liable on a similar indorsement of merely quasi negotiable instruments?

In National Bank of Commerce of Boston *vs.* Merchants' National Bank of Memphis, 91 U. S., 92, it was decided that the holder of a bill of lading, who has become such by indorsement, and by discounting the draft drawn against the consigned property, succeeds to the rights of the shipper. He has the same right; no more, no less. And this would be true, of course, of any subsequent indorsee; he would get the same right his indorser had from the shipper.

We have searched diligently and can find no case which decides that a bank which discounts negotiable paper

on the faith of bills of lading, or other collaterals, becomes thereby a warrantor that the collaterals are genuine. Such a law would be destructive of the largest business interests of the country. Millions of dollars are yearly loaned upon the faith of just such transactions. Is there a bank in the world that would dare discount drafts, accompanied by collateral securities, if it became thereby an absolute guarantor of the validity of every paper attached to the draft or note discounted as collateral security?

If there were any such rule of law it would, in all probability, have been discovered ere this.

In Maybee *vs.* Tregent, 47 Mich., 494. Tregent sued plaintiffs in error for $180, which he claimed had been obtained by them of him through one John Baker, upon a forged shipping receipt. The shipping receipt consisted of an ordinary railroad receipt, dated at Maybee station, to the effect that the Canada Southern R'y Co. had received the property therein mentioned (60 bbls. flour) to be forwarded to Detroit.

The marks and destination were, "Maybee & Hasley, Detroit, M."

Upon the back of this paper is indorsed the signature: "Maybee & Hasley."

The declaration which is in assumpsit, set out specially that the defendants were manufacturers and shippers of flour at Maybee station, held the receipt or bill of lading in question, and "in the regular course of trade indorsed said receipt in blank and caused the same to be delivered to said plaintiff, in consideration of * * $180.00, which the said plaintiff then and there, *upon faith of said instrument, and relying upon the representations and undertakings therein containing, and especially that said flour had been shipped as stated*, paid at the request of said plaintiffs [defendants] and to their use and benefit." It then avers "that by reason of the promises

the defendants became and were then and there liable to ship as per said bill of lading, and being so liable, they then and there, in consideration of the premises, promised so to do."

The breach assigned is non-shipment and non-delivery of the flour.

The Court says (p. 497) "The endorsement of the bill of lading, *under the most liberal decisions made anywhere*, is no more than an assignment of the shipper's obligation, and of the property called for by the bill. *It involves no promise on the part of the endorser to do anything towards forwarding the property to its destination. It involves no duty whatever in the endorser. If the instrument is fictitious, or if there is any fraud practised in transferring it, any remedy that the transferer would be entitled to would be for that special wrong, and not by importing into the endorsement a promise to perform what the carrier had agreed or purported to have agreed to do.*

"The declaration rests entirely—so far as the special count goes—on the theory that, by endorsing the document, the endorsers became bound to ship and deliver the flour.

"*They made no such promise—assuming that the endorsement was sufficient for all the purposes conceivable under any form of a bill of lading.*"

In other words, the endorsement of a bill of lading of personal property is like a quit claim and of real estate. It merely conveys all the title the endorser had, and warrants nothing; no contract or warranty is implied, except that the indorsee obtains thereby all the title his vendor had, if he had any, and no liability can be founded upon such endorsement alone. Any other rule would be disastrous to the financial institutions of the entire country.

"Although a statute makes bills of lading negotiable by endorsement and delivery, it does not follow that on the consequences incident to the endorsement of bills and notes before maturity ensue, or are intended to result from such negotiation."

Shaw *vs* R. R. Co., 101 U. S., 557.

II.

The rule of the Federal courts and many of the State courts is that mala fides is the sole test of whether the holder of negotiable paper is to be charged with notice of any infirmity in the paper so as to subject him to equities.

In the earlier English cases the bona fides of the acquisition of a negotiable instrument was regarded as the crucial test by which it was determined whether or not the party in so acquiring it by purchase or discount was entitled to full protection against equitable or other defenses which would otherwise have been valid against him; and in Lawson *vs.* Weston, 4 Esp. 56 (1801), when a bill had been lost and advertised in the newspapers and then discounted for one who found it and fraudulently offered it, it was contended that the banker could not recover without using due diligence in inquiring into the circumstances, as well respecting the bill as of the person who offered to discount it. But Lord Kenyon said:

"If there was any fraud in the transaction, or if a bona fide consideration had not been paid for the bill by the plaintiffs, to be sure, they could not recover; but to adopt the principle of the defense to the full extent stated would be at once to paralyze the circulation of all the paper in the country, and with it all its commerce. The circumstances of the bill having been lost *might have been material*, if they could

bring knowledge of that fact home to the plaintiffs. The plaintiffs might or might not have seen the advertisement, and it would be going great lengths to say that a banker was bound to make inquiry concerning every bill brought to him to discount; it would apply as well to a bill for £10 as for £10,000."

This case merely affirmed the doctrine of Miller *vs.* Race, 1 Bur. 452.

For a long period this doctrine remained the undoubted law of England, until, in the case of Gill *vs.* Cubbitt, 3 Barn. and Cres. 466 (1824), Lord Tenterden laid down the rule that although the holder had given value for the bill or note, yet if he took it under circumstances *which ought to have excited the suspicions of a careful and prudent man, he could not recover.*

Lord Campbell says, in his "Lives of the Chief Justices," vol. 3, 310, that Lord Tenterden's rule died with its author.

"It was soon much carped at; some judges said that fraud and gross negligence were terms known to the law, but of 'the circumstances which ought to excite suspicion there was no definition in Coke or in Cowell;' and the complaint of bill brokers resounded from the Royal Exchange to Westminster Hall, that they could no longer carry on their trade with comfort or safety."

In Crook *vs.* Jadis 5 Barn. and Ad. 909 (1834), it was contended that the plaintiff had not used *due caution* and had taken the bill under circumstances that ought to have excited the suspicions of a prudent man; but Lord Denman, C. J., told the jury to find for the plaintiff, *if they thought he had not been guilty of gross negligence.*

Thus the doctrine of *suspicious circumstances* was modified to gross negligence.

But this rule did not long remain in force; it was at once challenged, and in 1836 it was decided that while *gross negligence* might be evidence tending to show *mala fides*, *it was not proof of mala fides*, and was not sufficient to deprive the holder of his right to recover.

"Thus the bona fides of the purchaser or holder was restored as the test of his right to recover, and, after a wide departure, the law re-established upon the original basis established by Lord Kenyon."

1 Daniel Neg. Inst. (3 ed.) §774.

Lord Denman said: (Goodman *vs.* Harvey, 4 Ad. and El. 870 (1836).

"The question I offered to submit to the jury was, whether the plaintiff had been guilty of gross negligence or not. I believe we are all of opinion that *gross negligence only, would not be a sufficient answer* when the party has given consideration for the bill. *Gross negligence may be evidence of mala fides, but it is not the same thing.* We have shaken off the last remnant of the contrary doctrine. When the bill has been passed to the plaintiff without any proof of bad faith in him, there is no objection to his title."

This rule has been followed and approved, we believe, in all the subsequent cases:

Raphael *vs.* Bank of England, 33 Eng. L. and Eq., 278 (1855).

Arbouin *vs.* Anderson, 1 Ad. and El. (N. S.), 498 (1841).

Uther *vs.* Rich, 10 Ad. and El. (N. S.), 784 (1839).

Easdey *vs.* Crockford, 10 Bing., 243, and cases cited in Goodman *vs.* Simonds, 20 How. 368.

And by all or nearly all of the text writers.

Story on Notes, §§ 197, 382.

Story on Bills (3d ed.), § 416.

Edwards on Bills, 506.

2 Parsons, Notes and Bills, 277-9.

Byles on Bills (4 Am. Ed.) 121-6.
Smith's Mer. Law (1857), 255.
Edwards on Bills, 309.
1 Saund. Pl. and Ev., 591.
Chitty on Bills (12 ed.), 257.
Benjamin's Chalmers' Digest, Bills, etc. p. 106, illustration 2.

Thus the doctrine was in England, and the Supreme Court of the United States had its choice of which doctrine to follow. After full argument, in which the leading English cases were cited, it deliberately adopted the then prevailing English doctrine.

In the case of Goodman *vs.* Simonds, 20 How. 343, the question arose squarely.

Goodman sued Simonds, upon a draft drawn by Wallace Sigerson, and payable to John Sigerson. Upon the face of the bill was written, "Accepted, John Simonds;" and endorsed upon the same were the following endorsements:

"Pay T. S. Goodman & Co. or order, John Sigerson."
"Pay W. Nesbit & Co. or order, T. S. Goodman & Co."
"Pay Timothy S. Goodman, without recourse to W. Nesbit & Co."

The proof showed that Simonds sent the note to Wallace Sigerson, with one or more like it, for discount for the use of himself. Sigerson discounted one acceptance and remitted the proceeds. The draft in suit was wrongfully deposited with Goodman & Co., as collateral security. It was claimed that Goodman & Co. had a suspicion of the fraud (p. 356) and the trial court instructed the jury to the effect that:

"If such facts and circumstances were known to the plaintiff as caused him to suspect, or that would have caused one of ordinary prudence to suspect, that Wallace Sigerson had no interest in the bill, and no authority to use the same for his own benefit, and by ordinary diligence he could have ascertained these facts, then the jury will find for the defendant" (p. 359).

The Court hold that if the infirmity in the bill does not appear on the face

"Their want of care and caution * * falls so far below the true standard required by law, which is, *knowledge of the facts and circumstances that impeach the title*, that we feel indisposed to pursue the general discussion" * * p. 367.

"Gross negligence is defined to consist of the omission of that care which even inattentive and thoughtless men never fail to take of their own property; *and if such neglect would not defeat the right to recover—and clearly it would not, unless attended by bad faith*—it cannot require any farther reasoning to demonstrate that *the instruction was erroneous*" (pp. 368–9.)

In Murray *vs.* Lardner, 2 Wall., 110 (1864), Goodman *vs.* Simonds (20 How., 452), was affirmed.

The evidence showed that Lardner owned three railroad bonds of $1,000 each, payable to bearer. They were stolen from his safe Feb. 23d, 1859. The theft was discovered on the 26th and extensively advertised thereafter. On the morning of the 24th the thief or an accomplice negotiated the bonds to Murray through a broker, Parker, who was perfectly innocent in the matter. Neither Murray nor Parker knew the person who negotiated the loan of $2,000.

On the trial defendant's counsel asked the court to charge,

"That there were no such suspicious circumstances attending the transaction between Bates and Murray as to put Murray on inquiry; and that Murray was not chargeable with bad faith by any omission on his part to inform himself in regard to the bonds and Bates's title to them, further than he did." (p. 113.)

The court refused so to charge, and charged as follows (p. 113):

"It will be for you, gentlemen of the jury, to say whether the defendant has made out,—as the burden lies upon the defendant,—whether he has made out that he received the paper in good faith, without any notice of the defect of the title; in other words, of the theft from the plaintiff; or *whether there were such circumstances* of the char-

acter which I have described to you as such *would warrant the inference that there was ground of suspicion, and that he should have made further inquiry as to the character of the paper.*

The court say:

"A final blow was thus given to the doctrine of Gill *vs.* Cubitt (viz.: by Goodman *vs.* Harvey, 4 Adol. and El. 870). The rule established in this case (Goodman *vs.* Harvey) has ever since obtained in the English courts, *and may be now considered as fundamental in the commercial jurisprudence of that country.*

"In this country there has been the same contrariety of decisions as in the English courts, but there is a large and constantly increasing preponderance on the side of the rule laid down in Goodman *vs.* Harvey.

"*Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title.* THAT RESULT CAN BE PRODUCED ONLY BY BAD FAITH ON HIS PART. * * *

"Such is the settled law of this court, and we feel no disposition to depart from it."

See the similar case of Carpenter *vs.* Longan, 16 Wall. 271.

In Hotchkiss *vs.* National Banks, 21 Wall 354 (1874), it appeared that the St. Paul R'y Co. issued $1,000 coupon bonds payable Jan. 1st, 1893, to bearer. Immediately following the acknowledgement of indebtedness and promise of payment was a further agreement to make the "scrip preferred stock" attached to the bond full paid stock at certain times. To each of the bonds was originally attached by a pin the certificate of scrip preferred stock thus referred to.

Three of the bonds with certificates attached were stolen from the plaintiff and were taken by the defendants as collateral security for notes discounted by them, without actual notice of any defect in the title of the holder; but the certificates were at the time detached from the bonds.

Held that the absence of the certificates originally attached to the bonds was not of itself a circumstance sufficient to put the defendants upon inquiry as to the title of the holder (p. 359).

The court say (p. 359):

"The law is well settled that a party who takes negotiable paper before due for a valuable consideration, without knowledge of any defect of title, in good faith, can hold it against all the world. *A suspicion that there is a defect of title in the holder, or a knowledge of circumstances that might excite such suspicion in the mind of a cautious person, or* EVEN GROSS NEGLIGENCE *at the time will not affect the title of the purchaser. That result can be produced only by bad faith,* which implies guilty knowledge or wilful ignorance, and the burden of proof lies on the assailant of the title."

In Shaw *vs.* R. R. Co., 101 U. S., 564, the Court say:

"He may hold it [negotiable instrument] *though he took it negligently, and when there were suspicious circumstances attending the transfer.* Nothing short of actual or constructive notice that the instrument is not the property of the person who offers to sell it; that is, *nothing short of mala fides will defeat his right*. The purchaser is not bound to look beyond the instrument."

In Swift *vs.* Smith, 102 U. S., 442, it was decided:

"One who purchases [mercantile] paper from another, who is apparently the owner, giving a consideration for it, *obtains a good title, though he may know facts and circumstances that cause him to suspect, or would cause one of ordinary prudence to suspect, that* the person from whom he obtained it had no interest in it, or authority to use it for his own benefit, and though *by ordinary diligence* he could have ascertained those facts" (p. 444).

It would be a work of supererogation to cite or comment upon the decisions of the State courts to the same effect. The most of them will be found collected in 1 Daniel Neg. Inst. (3 ed.), § 775, note 4.

In Missouri and Wisconsin the rule is the same.

Missouri.

In the former State, the Supreme Court first decided that it would be sufficient to let in equitable defenses against a note assigned before maturity, if the circumstances are of such a strong and pointed character as necessarily to cast a shade upon the transaction and to put the holder on inquiry.

Hamilton *vs.* Marks, 52 Mo., 78 (1873).

But in a later appeal, *in the same case*, this ruling was reversed, and the rule of the U. S. Supreme Court adopted.

Hamilton *vs.* Marks, 63 Mo., 167 (1876).

The Court say, p. 175:

"*Suspicion* of defect of title, or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, *or gross negligence* on the part of the taker, at the time of transfer, *will not defeat his title.*"

In Edwards *vs.* Thomas, 66 Mo., 483 (1877), the Court reaffirms the second decision in Hamilton *vs.* Marks, and say:

"Merely putting a party about to purchase negotiable paper upon inquiry is not *per se* sufficient; nor is gross negligence. *There must be evidence of mala fides.*"

Wisconsin.

In the case of Keiley *vs.* Whitney, 45 Wis., 110 (1878,) the Court say, p. 117:

"As with other negotiable paper, mere suspicion that there may be a defect of title in its holder, or knowledge of circumstances which would excite suspicion as to his title in the mind of a prudent man, is not sufficient to impair the title of the purchaser."

This decision was affirmed in Gutwillig *vs.* Stumes, 47 Wis., 433 (1879), and again in Patterson *vs.* Wright, 64 Wis., 289 (1885).

In the latter case the Court hold that

"Where there is fraud in the transaction which forms the basis of consideration for a promissory note, knowledge that another note given for the same consideration is due and that interest on the note remains unpaid, is not such notice as will affect the *bona fide* of a purchaser of the former note."

III.

Goetz & Luening having accepted the drafts in the usual course of business are liable thereon, nor can they recover the money already paid.

In the case of Hoffman & Co. *vs.* Bank of Milwaukee, 12 Wall., 181 (1879), Chapin & Miles, a forwarding and commission firm in Milwaukee, were engaged in moving produce to Hoffman & Co., of Philadelphia, for sale there. It was customary for Chapin & Miles to draw drafts upon Hoffman & Co., attach them to bills of lading for flour, and discount them at the bank.

Having been thus dealing for about 16 months, Chapin & Miles drew three drafts on Hoffman & Co. in the ordinary way, attached forged bills of lading and negotiated them to the City Bank of Milwaukee, getting the money for them. The bank knew nothing of the forgery of the bills of lading. No flour was forwarded. Hoffman & Co. paid the drafts, and the proceeds were sent to the City Bank of Milwaukee. No flour coming, Hoffman & Co. discovered that the bills of lading were forged, and Chapin & Miles being insolvent, they sued the Milwaukee Bank to recover the money paid as aforesaid.

The Court say, p. 189:

"Money paid under a mistake of facts, it is said, may be recovered back, as having been paid without consideration, but the decisive answer to that suggestion, as applied

to the case before the Court, is, that *money paid*, as in this case, *by the acceptor* of a bill of exchange *to the payee* of the same, or to a subsequent indorsee, in discharge of his legal obligation as such, *is not a payment by mistake*, nor without consideration, unless it be shown that the instrument was fraudulent in its inception, or that the consideration was illegal, or that the facts and circumstances which impeach the transaction, as between the acceptor and drawer, were known to the payee, or subsequent indorser, at the time he became the holder of the instrument."

In that case, as in the case at bar, it was attempted to show that the plaintiffs accepted the bills of exchange upon the faith and security of the bills of lading attached, but the Court disposed of this claim, p. 189.

"Attempt is made in argument to show that the plaintiffs accepted the bills of exchange upon the faith and security of the bills of lading attached to the same at the time the bills of exchange were discounted by the defendants. Suppose it was so, which is not satisfactory proved, still it is not perceived that the concession, if made, would benefit the plaintiffs, as the bills of exchange are in the usual form and contain no reference whatever to the bills of lading, and it is not pretended that the defendants had any knowledge or intimation that the bills of lading were not genuine, nor is it pretended that they made any representation on the subject to make the plaintiffs contract any such liability. They received the bills of exchange in the usual course of their business as a bank of discount, and paid the full amount of the net proceeds of the same to the drawers; and it is not even suggested that any act of the defendants, except the endorsement of the bills of exchange in the usual course of their business, operated to the prejudice of the plaintiffs or prevented them from making an earlier discovery of the true character of the transaction * * * * Beyond doubt the bills of lading gave some credit to the bills of exchange beyond what was created by the pecuniary standing of the parties to the same, but it is clear that they are not a part of those instruments, nor are they referred to either in the body of the bills or in the acceptance, and they cannot be regarded in any more favorable light for the plaintiffs, than as collateral security accompanying the bills of exchange. * * * Proof therefore, that the bills of lading were forged, could not operate to discharge the liability of the plaintiffs as acceptors to pay the amounts to the payees or their indorsers, as the payees were innocent holders, having paid full value for the same in the usual course of business.

"Failure of consideration, as between the drawer and acceptor of the bill of exchange, is no defence to an action brought by the payee against the acceptor, if the acceptance was unconditional in its terms, and it appears that the plaintiff paid value for the bill, even though the acceptor was defrauded by the drawer, unless it be shown that the payee had knowledge of the fraudulent acts of the drawer before he paid such value, and became the holder of the instrument."

In Leather *vs.* Simpson, L. R. 11, Eq. Cases, 398, (1871) a bill of exchange drawn upon plaintiff was sent through defendants, who were bankers, for presentation and collection. The bank presented the bill to the plaintiff with this memorandum: "The bank holds bill of lading and policy for 251 bales of cotton per William Cummings." Plaintiff accepted the draft, paid the money and received the bill of lading, which proved to be a forgery.

Upon bill filed against the bank to recover back the money so paid it the Court held:

"That the memorandum did not amount to a guarantee by the bank that the so-called bill of lading was genuine, and the plaintiff had no equity to recover back the money."

Craig *vs.* Sibbett & Jones, 15 Pa. St., 238, (1850) was an action by Sibbett & Jones, exchange brokers, against Craig, Bellas & Co., of Philadelphia, on a bill of exchange drawn by Samuel Barnum on Craig, Bellas & Co. for $900.00 and accepted by them. Attached to the draft was a forged bill of lading.

The trial Court charged the jury *inter alia*:

"If the plaintiffs Sibbett & Jones are *bona fide* holders for the value of the bill they are entitled to your verdict. It is of no consequence whether they knew or not of the arrangements between Barnum and the defendants [Craig *et al*]. It is of no consequence that they became holders of the bill before it was accepted. There is no evidence that they had any knowledge of the fraud committed by Barnum or participated in it at all, even innocently * * * It was the business of the defendants to inquire and satisfy themselves, before they accepted the bill, that the property and funds to meet it had been remitted * * * If the plaintiffs paid a valuable consideration for the bill and took it in good faith,

without any knowledge or participation in the fraud of Bauman, they have a right to recover."

This charge was excepted to and the Court say, p. 240.

"*There is no plausible pretext for refusing to pay this bill*; for it is not pretended that the plaintiffs below, who discounted it in the regular course of their business, did any acts which was not consistent with perfect good faith. They knew it was drawn against flour *supposed* to have been shipped in a regular course of dealing between the drawer and the acceptors: but they had discounted other bills between the parties, which were paid at maturity; and if they had not, they would have had no reason to suspect fraud was meditated by the drawer in this particular instance."

A similar case arose in Alabama: Young & Son *vs.* Lehman *et al.*, 63 Ala., 519, (1878).

"A letter authorizing the person to whom it is addressed to draw on the writers for any cotton he may buy in a named city, provided the draft is accompanied by a bill of lading of the cotton, and does not in amount exceed three-fourths of the market price of the cotton, binds the writer, as in favor of any person who, on the faith of the letter, advances the money to buy the cotton, for a draft which conforms to the prescribed conditions, although the accompanying bill of lading is not genuine: *and having paid the draft, they cannot recover back the money, on discovering the fraud in the bill of lading.*"

In case of Robinson *vs.* Reynolds, 2 Ad. and El. N. S., 196 (1841), one Pat Keegan drew a draft on Robinson, *et al.*, and endorsed the same to the National Bank of Ireland, whom Reynolds, an officer, represented.

The bill charged that the bill of lading was, by the usage and customs, a negotiable instrument, *by the endorsement whereof for value* the property passed to the endorsee. The bill of lading was forged, and the consignees, who had paid the draft, sued the Bank which had discounted it and charged as follows:

"THE NATIONAL BANK *then endorsed the said forged and counterfeit receipt, bill of lading or document*, and sent or transmitted the same so endorsed by them, together with the said bill of exchange, to Liverpool, and produced and presented the said forged and counterfeit receipt, bill of lading or document, together with said bill of exchange, to defendants and requested defendants to accept the said bill of exchange for them, to wit, on the faith of, and in consideration of, and on the delivery over to them by the Bank of, the said forged and counterfeit receipt, bill of lading or document, so *endorsed*; which they, to wit then, produced and showed to the defendants *so endorsed as aforesaid*, and delivered the same *end rsed* by the bank, to defendants as and for a true receipt, bill of lading or document, signed by the said T. Mitchell as agent of and for the company. And defendants, to wit then, in consideration of the said goods in the said forged and counterfeit receipt, bill of lading or document mentioned, and supposed to have been delivered and received as stated therein, and to be represented by the said receipt, bill of lading or document, and confiding and relying on, and in consideration of, the said forged and counterfeit receipt, bill of lading or document, *and the said endorsements thereon, and on the faith of the same and in ignorance of the said receipt, bill of lading or document being* forged or counterfeit, but supposing the same to be genuine, and without notice or knowledge of the premises in this plea mentioned, accepted the bill in the first count mentioned for the National Bank, and at their request."

"It is allowed that the case of Robinson *vs.* Reynolds was well decided, that its authority has never been questioned, and that it is part of the commercial law of England."

Thiedemann *vs.* Goldschmidt, 1 De Gex, Foster & Jones, 4 (1859). This is a case directly in point.

In the case First National Bank *vs.* Burkham, 32 Mich., 328 (1875), opinion by Mr. Justice Cooley. He says:

"The drawees seek to recover from the payees the amount of a bill which they have accepted and paid, and the genuineness of which is not disputed. The ground upon which they plant their right of recovery is, that they have paid under a mistake of fact. The mistake consisted in their security from the drawer of the bill being ficticious when they supposed it to be genuine and reliable.

* * * * * * *

"It is said that the drawees relied upon this security and would not have paid the bill but for a belief that it was valid. It is in this that the mistake consists on which they rely for a recovery.

"If a mistake regarding their security will authorize the drawees to recall the payment made to the payee, no reason is perceived why a mistake regarding the responsibility of the drawer, or regarding his honesty and integrity, or anything else upon which they relied for protection in their dealings, should not justify the like action." * *

IV.

The declarations of the President of the bank, made long after the transactions, were no part of the res gestae.

The authorities are uniform on this point. The leading case in the Federal Courts is Clough *vs.* Packet Co., 20 Wall. 528 (1874), action to recover damages for personal injuries.

The Court say, p. 540:

"Two days afterwards (viz., after the accident) Mrs. Clough, the witness, had a conversation with the captain, in which he made some statements respecting the accident, and these statements the Court allowed to be given in evidence against the defendants. In this we think there was error."

And the case was reversed.

It will be noticed that in this case the admissions were made by the captain while plaintiff was continuing her trip on the same boat.

The rule is the same in Wisconsin.

In the case of Hazelton *vs.* Union Bank of Columbus, 32 Wis., 34 (1873), Gardner deposited $2,500 in defendant's bank and took a certificate of deposit payable to Buchanan. Buchanan endorsed it and handed it to Mrs. Gardner, saying: "This is yours—for you and your children, when you need it use it." Buchanan died and the next day Gardner cashed the certificate. Buchanan's administrator, Hazelton, sued the bank.

After the certificate was paid Mr. and Mrs. Smith, both witnesses for the plaintiff, called at the Bank and had a conversation with its President in relation thereto.

An objection by the defendant to the conversation was sustained.

The Court say, p. 49:

"The statements of Mr. Wheeler [the President] called for by the interrogatory related to a past transaction, which had been closed by the payment of the certificate, *and cannot in any correct sense be said to be a part of the res gestæ.*"

* * * * * * *

"The cases which recognize the same principles are very numerous, but no useful purpose will be accomplished by commenting further upon, or even citing them. These principles are so well settled that it is quite unnecessary to do so."

In the case of Randall *vs.* N. W. Tel. Co., 54 Wis. 140 (1882), the plaintiff was injured by a wire of defendants which had fallen across the highway.

The General Superintendent of defendants sent a telegram (p. 143) which virtually admitted the company's liability, and contained the following sentence:

"We will pay any reasonable bill." This telegram was offered in evidence, and the Supreme Court say, p. 144:

"The inadmissibility of this evidence is fully established."

The Court cites a large number of authorities (p. 144), and among them Packet Co. *vs.* Clough, *supra*.

V.

In the Federal Courts the trial judge may direct a verdict.

It is unnecessary to cite many authorities, but in Oscanyan *vs.* Ames, 103 U. S., 262, the Court directed a verdict on the facts stated by counsel in opening his case, and the ruling was affirmed.

It is respectfully submitted that the judgment of the trial court in this case should be affirmed.

Milwaukee, Wis., October 28, 1886.

FINCHES, LYNDE & MILLER,

Of Counsel for Defendant in Error.

B. K. Miller
of Counsel

119-551

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Supreme Court of the United States.

OCTOBER TERM, 1886.

AUGUST W. GOETZ, JR., AND AUGUST F. LUENING,
Plaintiffs in Error.
v.
THE BANK OF KANSAS CITY,
Defendant in Error.
No. 63.

POINTS AND BRIEF FOR DEFENDANT IN ERROR.

WARNER, DEAN & HAGERMAN,
Defendant's Counsel,
KANSAS CITY, MO.

Press of Ramsey, Millett & Hudson, Kansas City.

Supreme Court of the United States.

OCTOBER TERM, 1886.

AUGUST W. GOETZ, Jr., and AUGUST F. LUENING,
Plaintiffs in Error.
v.
THE BANK OF KANSAS CITY,
Defendant in Error.

No. 306.

POINTS AND BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

Goetz and Luening, a partnership, sued the Bank of Kansas City in an action at law to recover back the sum of $7,395, which was the amount they paid on four negotiable bills of exchange drawn on them by J. N. Du Bois, payable to the order of said bank and discounted by it in the usual course of business.

Plaintiffs' cause of action is predicated on the statement that forged bills of lading were attached to these bills of exchange which they believed were genuine when they accepted and paid the bills of exchange, and they claim in some indefinite and indistinct way that the bank

ought to have known the bills of lading were forged, although the bank had nothing in the world to do with the arrangement they made with their customer, Du Bois, under which these bills of exchange were drawn, and notwithstanding the fact, too, that it clearly appears that it was merely for his and their convenience that the bank discounted these bills of exchange before acceptance, receiving therefor a most trifling sum, and notwithstanding the further fact that it would not have discounted them had its officers for a moment believed that the bills of lading did not furnish the bank security and protection in case of the non-payment of the bills of exchange.

The bank purchased one other bill of exchange drawn by Du Bois on said firm, and which although accepted by them, they refused to pay because the bill of lading attached was not genuine. After the commencement of their action against the bank, it, in turn, sued them on the last mentioned bill. The court ordered the suits to be consolidated, and they were tried together. The case was tried by a jury upon the evidence offered alone by Goetz and Luening. The court instructed the jury in the first action to find for the defendant; and in the second action that it should have judgment on the bill of exchange accepted by Goetz and Luening and not paid.

It is now claimed (and we must believe with simulated seriousness) that the facts of this case make it *sui generis*. And it is also gravely announced by counsel for the appellants that the question that he would have reviewed by this court is one "of commercial law that is attracting the widest attention in the business world;" although the fact is, that every controlling proposition of law relied on by him in his brief has already been decided

adversely to him by this court, to say nothing of repeated decisions made against him by the Courts of England and the courts of last resort of several of the states.

But what are the facts of this case taken and reviewed as a whole as presented by the evidence, and not by picking out sentences here and there in the testimony of the witnesses and stringing them together without reference to dates or the transactions to which they pertain, and thereby making a most unfair presentation of the case as an entirety? It is upon such a presentation that the counsel for appellants assume to make comments and draw conclusions wholly unauthorized by anything offered at the trial. The facts are few and simple:

Goetz and Luening in October, 1881, and prior thereto, were engaged in the business of handling and selling hides on commission in Milwaukee, Wisconsin. On the 10th of that month they agreed with said DuBois, a large buyer of hides, wool and tallow, at Kansas City, Missouri, to sell his hides at Milwaukee on a commission of two and one-half per cent of the amount realized from the sale thereof. It was further agreed that DuBois should have the right to draw on them for each shipment at two-thirds of its market value, the draft to be accompanied by a bill of lading for each consignment of hides. They stipulated to accept and pay his drafts when so presented. This agreement was made by telegrams, but subsequently confirmed by letters.

It appears that Goetz, the senior member of said firm who made this arrangement with Du Bois, was well acquainted with him at that time, and had been for several years prior thereto. It also appears that at the very time Goetz and Luening entered into this agreement they had

an agent traveling for them in the country in the immediate neighborhood of Kansas City.

Under this agreement with Du Bois, five drafts, aggregating in all to $9,395 were drawn by him; the first dated October 11, accepted October 14, paid October 17, was for $1,710; the second dated October 12, accepted October 17, paid October 21, was for $1,685; the third dated October 17, accepted October 20, paid October 24, was for $2,000; the fourth dated October 19, accepted October 22, paid October 25, was for $2,000; the fifth dated October 24, accepted October 28, was for $2,000. The last named draft was not paid by the plaintiffs, and was protested for non-payment. These drafts were all made payable to E. K. Thornton, cashier. Said Thornton was at the time the cashier of the defendant, the Bank of Kansas City, the largest banking institution, in business and in capital, in that section of the West.

To each of the drafts a bill of lading was attached, which purported to have been issued by the Chicago & Alton R. R. Co. Each of these bills of lading contained a recital of a certain shipment of hides to Milwaukee by Du Bois to the plantiffs. They were marked and consigned "Order shipper," then, "Notify Goetz and Luening." There was also attached to each draft a statement or invoice of the shipment, which purported to be represented by a bill of lading.

The signatures of the freight agent on the various bills of lading accompanying the bills of exchange were forgeries.

These drafts were discounted as they were drawn by the defendant bank, the bank paying therefor the face of the drafts less the banking rates then charged for exchange on Milwaukee. The total amount of discount charges on

these drafts amounted to the insignificant sum of $50. After deducting the expenses connected with the handling of the bills of exchange and procuring the currency to meet them, the bank probably realized out of these various transactions a sum not exceeding $25.

The proceeds of the bills of exchange, less the discount charges, went immediately to the credit of Du Bois on the days they were severally purchased, and he would check out the amount in the usual course of business that day, or within a day or two next following.

It is claimed in the declaration that the amounts realized on these bills of exchange by the bank were applied by it to the payment of a pre-existing indebtedness; but there is not one word of evidence to substantiate this charge. The plaintiffs' own testimony completely confutes this statement.

It is alleged by Goetz and Kuening in their pleadings in both actions that the bank was not a purchaser of these bills of exchange in good faith, because they knew, or had reason to believe that the signature of the freight agent to the bills of lading was a forgery, and that the statement of goods shipped and their values in the invoice bills accompanying the bills of exchange were untrue.

The plaintiffs in error took the depositions of various witnesses, a part of which they used at the trial, and a part of which they did not use. They selected only those which in their judgment tended to make out a shadow of a case in their behalf. They also introduced some oral testimony to support the allegation of bad faith upon the part of the bank, and at the conclusion of their case, as already stated, the court instructed the jury to find for the defendant bank. And it further instructed the jury to find a verdict for the bank as plaintiff in the action brought by it to

recover the amount on the draft last drawn, which was accepted by the plaintiffs but not paid, as has already been mentioned. A motion for a new trial was fully argued before the learned District Judge for the Eastern District of Wisconsin, and His Honor Justice Harlan, of this court, and overruled.

The evidence offered by Goetz and Luening to establish bad faith upon the part of the bank amounted to this, and this only:

Du Bois had commenced business with The Bank of Kansas City in 1881. During that time he was an extensive dealer in hides and tallow; his transactions were carried on with the best commission houses in the country; he drew bills of exchange on these various commission houses in the East, which were purchased by the Bank of Kansas City. The bills of exchange purchased by the bank ranged from $[illegible] to $100,000 a month between the date of his commencing business with the bank and the drawing of the last bill of exchange mentioned. His bills of exchange were invariably accompanied by bills of lading, and the bank in its confidence in the good faith and integrity of Du Bois, and suspecting nothing as to the genuineness of the bills of lading, would cash his bills of exchange.

Du Bois was a man of limited capital, but of great business energy and capacity. He was also a man of great popularity. He commenced doing business with the Bank of Kansas City in March, 1881. He had, just previously thereto, been a member of the city government, having been elected by a popular vote to represent his ward in the common council. He was also regarded at the time of his failure as a prominent candidate for the nomination of mayor of the city on the Republican ticket. He was

also a member and director of the Board of Trade, a business organization of influence and standing in Kansas City. He was also a member of the committee on arbitration of that association, which was its most important committee, to which were referred all business disputes growing out of the transactions had between its members. He had been a captain in the Union army in the late war, and was a brave and gallant officer; and a military company composed of the best and most honorable young men of Kansas City had made him their captain, and he was its commanding officer at this time, and had been for quite a while previous thereto. He was generous and universally liked. He was received socially in the best society of that city. The manner in which he became a customer of the Bank of Kansas City is detailed in the evidence of J. W. Slavens, formerly mayor of Kansas City, a gentleman of high character engaged then in the packing and provision business, and at this time a director and stockholder in that bank:

"I am in the packing and provision business in Kansas City; have resided here since the fall of 1865; am stockholder and director in the Bank of Kansas City since its organization; was acquainted with Joseph N. Du Bois. I think he was here when I came here, and the firm was then in existence. It was Askew, Du Bois & Co. I knew him from that time until he left. In the spring, summer and fall of 1881 his business was dealing in hides, wool tallow and pelts. In the fall of 1881 I introduced him to the officers of the Bank of Kansas City. That month, and several months previous, we were selling him our hides. We usually contracted them by the month. At that time he told me he was going change his bank account to either Armour's or the Bank of Kansas City; that his bank was charging him about double exchange on all his dratts, and he wouldn't stand it longer. I told him I was just then going to the Bank of Kansas City. He rode with me to the bank. On the way he told me didn't want to borrow any money; his business was principally exchange busi-

ness, cashing drafts on hides and wool that he took in and shipped right out again. That was the way he handled our hides. I introduced him to both Thornton and Chick and opened the matter. He was there to talk for himself. I told Thornton that Du Bois had said to me he was going to change to another bank, and I would like to have him to do business there; that he was a very active business man, doing large business in hides and wool; that he had said he didn't want to borrow any money, and I thought that was a good kind of customer to have."

Q. "What information had you then of Du Bois's business-standing and character in this community?"

A. "Our business dealings with him had always been cash. He received the hides and gave his checks, which were always paid promptly. I understand him to be an active, pushing business man; knew nothing of extent of his capital, but believed it was $25,000 to $30,000. The only thing I knew against him was his wheat speculations in Chicago. When I introduced him to the officers, I stated he was a customer of ours, buying our hides. His transactions with us amounted to $25,000 to $30,000 a month. He used to be in our office every day looking at the ticker there, getting quotations of Chicago markets. I did not at the time regard his speculations dishonorable or disreputable, but it may have been that kind of business that led to his downfall. When I introduced him to the bank I did not believe he would be an unsafe customer, unless it was to borrow money. I never dreamed he would be unsafe in a dishonest way, committing forgery or anything of that kind; otherwise I wouldn't have done business with him myself, nor introduced him to anybody else to do business with. At that time I knew nothing of any dishonorable business transactions he had been engaged in. I knew only of his wheat speculations, and didn't consider that dishonorable. Before introducing him to the bank I had done business with him five years, since he dissolved with Askew, Du Bois & Co. After the introduction to that bank, I continued dealing with him until he quit business. There were then just two hides that he had gotten that were not paid for. He usually got hides in morning and paid for them in afternoon. I had confidence in his integrity to the extent that he would not give us a check that was fraudulent, or anything of that kind. He knew we were doing a strictly cash business. When I introduced him to

the bank, I did it in good faith to promote the interests of the bank. I was then a stockholder in the bank to the extent of $2,000 or $3,000." (Pages 101 and 102.)

Mr. Chick, the president of the Bank of Kansas City, was introduced as a witness in behalf of plaintiffs in error, and testified as follows:

"Mr. Slavens, who came with Du Bois to the bank, was a prominent pork packer at that time; he was a director and stock holder in the bank; he was a man that stood high in business circles; he had been dealing with Du Bois, sold him his hides and tallow. When we took his drafts we had no knowledge of the financial responsibility of the drawees, Goetz and Luening; we did not look them up; relied on the security on the bills of lading; supposed the drafts were all right." (Page 77.)

Again he testifies:

"It is a fact that when he (Du Bois) first applied to us in the spring of '81, we declined to receive him as a customer, because I did not know the character of the business he wanted to transact; thought he was a large receiver of hides and wool, and probably might want me to advance before the goods got to the Kansas City market. Du Bois was a prominent man in Kansas City; he seemed to have considerable influence; was a member of the common council, an active man, and of very good address; I had known him for several years, and also knew with what banks he had been doing business before he came to me." (Page 70.)

Again the same witness testifies:

"I don't know that we ever discounted a note for him while he was doing business (with us) or at any other time; we never loaned him any money; we may have allowed him to over-draw a very small amount; our business with him was principally all exchange business; that is, he would ship a lot of hides and wool, we would cash his drafts on the bills of lading attached, and that was the end of the business; we would cash his drafts when they were secured by shipments of merchandise evidenced by bills of lading; we may have done in some cases otherwise; the rule of our business with him was, it was advance on shipments, which was all he required; he would deposit his

drafts with bills of lading attached, and check out the money as suited his convenience; the business relations were limited to that because that was all he required.

The same witness again testifies:

"The reason for afterward taking Du Bois as a customer at the bank after having first declined him was, we thought it would be a satisfactory account with the bank; we had talked it over with Mr. Slavens, one of the directors of the bank, and we decided to take the account. At that time Du Bois's reputation was not [generally] known to me to be bad.

Again Mr. Chick testified:

"When Du Bois came to our bank to change his account, I did not accept it without hesitation; I hesitated because I did not care about handling his business, or taking customers of that kind; we thought we might have to advance for him; when I was assured that there would be no advance required, I took his account. That was the sole reason why I hesitated."

Again:

"After this Boston wool transaction, we continued to do business with Du Bois as before; we suppose the wool would pay the drafts when sales were made and final returns were made."

Q. "You didn't watch him any closer after that, or watch him at all?"

A. "I suppose we always looked after what was in the bills of lading, and we thought we had enough to cover the drafts in all the transactions; that was our agreement in the first place, and we acted on them in all our dealings."

Again:

"*Up to the 31st of October ('81) our bank had received no information that we had received any forged bills of lading, and had no reason to suspect we had.* I can not give any idea of the number of the bills of lading we received from Du Bois between March, 1881, and October, 1881; prior to that time we never had any information concerning any forged bills of lading received by the bank. I think the business would run from $25,000 to $100,000 a month."

Plaintiff Goetz testified that on Friday, October 28, 1881, about six o'clock in the evening, he telegraphed in the name of his firm to the Bank of Kansas City as follows:

"Accepted and paid draft of Du Bois promptly. No hides in sight. Closely trace and answer quickly."

It appears from his testimony that his agent and employee at Kansas City had previously advised him that Du Bois had made no shipment of hides to him, and his firm had also received information from the railroad agent at Kansas City that no such bills of lading such as they had received had been issued by his company. Notwithstanding this fact, instead of advising the bank in specific terms that it had received forged bills of lading, they sent the indefinite despatch already given. When their counsel questioned Mr. Chick relative to this despatch, he stated:

"I think the bank received it on Saturday. The first time I saw it was on Monday morning, Oct. 31st. I was at the bank on Saturday."

Q. "Why didn't you answer it?"

A. "I will state: the cashier sent it down to Du Bois; he had no idea of any fraud at the time. It came back, and Monday morning it was lying on his desk when I came into the office; I read the despatch, and I don't think it was five minutes after before Mr. Sylvester and Mr. Goetz came into the office, and I had taken no action on it at that time; I had no time until they came in to answer it. I didn't, nor did the cashier or any other officer of the bank, to my knowledge, make any effort to trace the hides, as requested. I think I did know on Saturday that Du Bois was gone; I didn't inform Goetz and Luening about it; I didn't know that he had absconded, or that there was any cause to inform any one; I thought he had gone on business. We didn't call on the freight agent about this matter after the receipt of this telegram until Goetz and Luening came, *because we suspected no fraud*; we sent down to Du Bois to trace it, *but didn't suspect anything wrong about it.*"

Du Bois was careless in business methods. In the fall

of 1879 and prior thereto he was doing a large business with Smith, Fossett & Co., of New York City, and frequent fault was found with the manner in which shipments were made to them on which he had drawn drafts. The drafts were all genuine, and no complaint was made on account of shortages, but so much confusion grew out of the manner in which he did business that Smith, Fossett & Co. notified him that unless he got some one who understood shipping goods to take charge of that part of his business they would discontinue business with him. Du Bois wrote to them that he would employ any one that they would recommend. They recommended one John MacLellan, whom Du Bois thereupon employed. He continued in his employ until Du Bois dissappeared.

It is conceded that MacLellan is a man of honor and of careful business habits. C. J. White, the cashier of the Kansas City Savings Association, the bank at which Du Bois had been doing business for several years, immediately preceding the time when he transferred his account to the Bank of Kansas City, was called as a witness in behalf of plaintiffs in error. He knew MacLellan well, and testified that he had had dealings with him for Du Bois to the amount of thousands of dollars. This witness testified that:

"MacLellan was a man who stood well in my judgment. When his signature was attached to a draft I had every reason to believe that the transaction was a fair one; never saw anything to the contrary. When MacLellan came to our bank with a draft and a bill of lading attached, I believed the transaction was a fair one; and when I cashed the draft I thought I would (receive) the money. * * If MacLellan brought drafts with bills of lading attached, I had no suspicion or reason to believe the bills of lading were forgeries. After the Buffalo transaction MacLellan drew drafts with bills of lading attached

for thousands of dollars. Du Bois got the money on them and there was no difficulty about them."

It further appeared that this particular bank, up to the very day of the disappearance of Du Bois took bills of exchange with forged bills of lading attached, drawn on eastern parties, and that the transactions had with that bank were in all particulars precisely the same as those had by Du Bois through MacLellan at the Bank of Kansas City, with this difference in favor of the Bank of Kansas City; the latter bank had such confidence in the genuineness of the bills of lading attached to these bills of exchange that it advanced the money on them previous to their acceptance by the drawees; while on the other hand, the Kansas City Savings Association took the drafts for collection and as soon as they were advised of the payments of the drafts they would pay Du Bois the money, although the parties accepting and paying them would not in the usual course of business receive the goods which pretended to be represented by the bills of lading for several days after the bills of exchange were accepted and paid; and if the bills of lading were forgeries, the payees would not discover for a considerable time after they had parted with their money.

Now, the special significance of his testimony is, that MacLellan, who is declared by the testimony of plaintiffs in error to be a man of "good character," who "stood well" in the judgment of witnesses, who had "a fine reputation," and concerning whom it was said if he should bring to the bank bills of exchange with bills of lading attached "no suspicion" could attach to the transaction, and there would be "no reason to believe that the bills of lading were forgeries," that he, the said MacLellan, drew every draft in question drawn on plaintiffs in error;

he wrote every statement or invoice of the pretended shipment; and [redacted] the forged bills were endorsed by him in the name of Du Bois. The bills of exchange were all drawn by J. N. Du Bois per J. M., and "J. M." was J. MacLellan, Du Bois's foreman, as already mentioned.

MacLellan himself testified that all of the bills of lading that went to Goetz and Luening were written by himself:

"Du Bois gave me the bills of lading signed, and told me to take them *to the bank as usual*. When I computed the invoice, I made the drafts for the amount of the bills of lading, and went to the bank." (Page 97.)

Again, the same witness testified for plaintiffs in error as follows:

"I am now invoice clerk at the office of Fowler Bros. packing house. I was with Du Bois from September, 1879, till about ten days after he left, when the developments came out. During all that time I believed everything to be perfectly straight; if I hadn't so believed, I wouldn't have presented the bills of lading and made the drafts. I believe I was in a better position than any one else to observe him. In all the transactions with the bank," (referring to the Bank of Kansas City), "they were so careful that I wouldn't (couldn't) do business with them, and Du Bois would have to do the business personally. I never tried to persuade them; if there was any objection, I went back and reported to Du Bois, and he went back and settled the matter. * * * * * Du Bois was the smartest business man I ever saw. * * * * * In these matters the bank seemed to be very cautious." (Page 98 and 99.)

Mr. Chick testified that:

"MacLellan, who was the clerk of DuBois, brought these drafts to the bank—generally to the cashier; he would O. K. them, and then deposit them with the receiving teller to his account current, they then went to Du Bois's credit on the books of the bank; the money was drawn out by check, as any other bank account would be; the bank would make only the exchange, which was from

$2.50 to $5.00 a thousand. We took drafts on Chicago at $2.50; when we found they were going to Milwaukee, we charged for the difference in time. This money was checked out in the ordinary course of business. It was not applied on any pre-existing indebtedness; at that time Du Bois didn't owe the bank anything on the books." (Page 77.)

The same witness further testified that on the 28th of October, the day Du Bois disappeared, they discounted before acceptance a bill of exchange drawn on Tostel & Gallum for $1,100 with a forged bill of lading attached, and that on the day preceeding, they discounted another bill of exchange before acceptance, drawn on E. Romsch & Son for $1,150, to which a forged bill of lading was attached; neither of these bills of exchange were ever accepted. Du Bois got the money on them, as well as on the bills of exchange in question, and left for parts unknown. This witness further testified:

"We continued to receive drafts from Du Bois with bills of lading attached up to October 28th, possibly, we took drafts on the 29th, I don't know. I first learned on October 31st that Du Bois had absconded." (Page 78.)

What higher proof than this could be offered as to the good faith of the bank, when it discounted these bills of exchange? It gave its money for them. What better evidence could be furnished of its confidence in the genuineness of the bills of lading? It discounted the drafts drawn on Goetz and Luening without knowledge of their financial responsibility, but relying wholly on the bills of lading as security for the money they paid out on the bills of exchange. It is not pretended or shown that Goetz and Luening possessed any financial standing. The bank gave still greater proof of its good faith, when the testimony of the plaintiffs in error show that it discounted the drafts before acceptance by Goetz and Luening, and when it

further appears that at the times it permitted Du Bois to get the money on them, it had no claim against Goetz and Luening for anything, and the only security it possessed was the bills of lading.

Can evidence of good faith of a higher order than this be produced in court of justice? The acts of the officers of this bank, as well as their words, declare it unmistakably.

It would have been, not only bad faith, but acts of positive dishonesty for the officers of the Bank of Kansas City to have purchased the bills of exchange before acceptance, but in anticipation thereof, had they had a suspicion that the accompanying bills of lading were not genuine.

What does the uncontradicted evidence of the plaintiffs in error show their standing and character to be?

James A. Mann, business secretary of "The Kansas City Journal," a daily newspaper, says:

"I know J. W. L. Slavens; he is a very careful, cautious business man; he has had a large business in the beef and pork packing business." (Page 89.)

Mr. Slavens has since retired from business.

James M. Coburn, cashier of the Merchants National Bank:

"I know the Bank of Kansas City. It is a safe, conservative bank. I know Mr. Chick, and know he has had a large experience in banking, and is a careful, prudent, conservative man. I have less acquaintance with Mr. Thornton (cashier of the Bank of Kansas City) than with Mr. Chick. His reputation is the same." (Page 87.)

Mr. Benjamin McLain, occupation, hide and wool dealer:

"I know Mr. Chick. He is one of the oldest bankers in the country. I know his bank. It does a large business, and has a reputation of being a conservative, careful

bank. I know the reputation of the cashier of that bank to be also good." (Page 95.)

William H. Winants, cashier of Armour Bros. Banking Co.:

"I know Mr. Chick. He has been in the banking business as far back as 1860, some twenty odd years. He is regarded as a careful, prudent man, and as far as I know, a conservative man. I would think his judgment fully as good as mine. I know Thornton, the cashier of that bank; I understand he is a careful man; his reputation is that he is a prudent man, and a man of good judgment. I also know Mr. Slavens; he is one of the leading business men of the town, and as far as I know, a careful, prudent business man. I was a member of the Craig Rifles, 2nd Sergeant, in 1881; Du Bois was captain up to that time; Du Bois was a prominent member of the common council of the city, and took an active part; I had the pleasure of serving with him; he was also an active member of the Board of Trade; he had many warm friends; I don't know that he had many enemies—he had some on account of family matters."

Morrison Munford, Esq., manager of "The Kansas City Times," a daily newspaper:

"I know Mr. Chick and Mr. Thornton of the Bank of Kansas City; their reputation as to careful and prudent bankers is as good as that of any in the community; that is also the reputation of the bank."

Frederick C. Schroeder, commission merchant:

"I know the Bank of Kansas City, and always found it to be a very conservative institution. I have done business with it. I know Mr. Chick and Mr. Thornton personally; they are considered careful, prudent, pains-taking bankers, and have a very fine reputation for integrity and everything of that kind." (Page 100.)

DU BOIS'S BUSINESS STANDING.

A. F. Luening testified in behalf of his firm. He said:

"I first made the acquaintance of Du Bois in 1872 or 1873, at Kansas City, while I was traveling for Phister &

Vogel, leather company. At that time Du Bois had a very high standing, and was considered one of the best business men in the city, and was doing a large hide business. Since then I have met him several times between 1873 and 1877. Since then I have not met him; have not been in Kansas City. During all that time his standing was good. In 1877 or the spring of 1878, while I was a member of the firm of Luening & Bautz, commission dealers in hides, in Milwaukee, Du Bois shipped us some sheep skins, which we sold for him on commission." (Page 60.)

On cross-examination he says:

"I was well acquainted with Du Bois, and had great confidence in his honesty and integrity, and when he wrote us the letters I have read in evidence that he had shipped the property to us, I believed it." (Page 66.)

It further appears that Du Bois's good name and business integrity were never questioned until some charges were made against him in the newspapers of Kansas City in August, 1879, more than two years previous to the dates of the bills of lading involved in this litigation.

These newspaper articles were of a cheap, sensational order, and precisely of the kind that any self-respecting business man would pay no attention to unless he were at the time personally interested in DuBois. To read these articles is sufficient to say what value should be attached to them. Du Bois publicly denied over his signature the truth of these newspaper statements. And if he previously possessed the good character and business standing which plaintiffs' witnesses attribute to him, they certainly would not be greatly impaired by such trashy publications as these. The good name of a life-time is not so easily destroyed. This is fortunate indeed.

That Du Bois did explain this matter to the satisfaction of a great many of his friends, there can be little doubt.

Moreover, it distinctly appears from the paper in which these charges were made, that when verification was sought from the parties best knowing what had been done by Du Bois, they utterly refused to furnish it.

Du Bois was then doing business with the Kansas City Savings Association, of which C. J. White, sometimes called "Church" White, was the cashier.

The second article in the newspaper mentioned, concludes as follows:

"Of course, the banks and the lawyers interested and engaged in the case would not and could not divulge and state secrets that would interest the public. These official and professional gentlemen were artistically pumped yesterday, but they were as dumb as oysters. But enough leaked out to justify the "Times" in all statements made, despite the reticence of Major Warner and Mr. Church White."

It is not pretended or claimed that reference was ever again made in any newspaper to the charges contained in these newspaper articles, and which has been designated in the testimony as the "Buffalo transaction."

It further appears that Du Bois continued to do a very extensive business with the Kansas City Savings Association, and running up into the hundreds of thousands of dollars annually, and that this business was precisely of the same kind that was transacted subsequently by him with the Bank of Kansas City—that is, drawing drafts against shipments of hides, wool, etc., with bills of lading attached.

White testified in his examination in chief in behalf of plaintiffs in error as follows:

"I knew J. N. Du Bois when he lived here, and sixteen or seventeen years before he went away. He kept his account at our bank a considerable length of time, commencing about 1876, until early in the spring of 1881, when we discontinued doing business with him. My reasons for discontinuing business with him were, that

his account gave us a great deal of trouble; his drafts would occasionally come back protested, and he hadn't means sufficient to take them up when returned. *I heard of the difficulty he had with Buffalo parties, but didn't know the particulars.* It occurred with my bank; the drafts I sent on there were paid; there were bills of lading attached to each of them; I didn't know at that time that those bills of lading were forgeries."

Mr. Chick was questioned by counsel for plaintiffs in error relative to this matter. He stated that he had no recollection of reading the newspaper articles concerning Du Bois, but that he had heard that the Kansas City Savings Association was liable to be sued for a large amount, or suffer, on account of Du Bois, and went to White, as one friend would go to another, to inform him of it. He inquired of White what the difficulty was; the latter stated that he would tell him subsequently, but never did. The claim made, whatever it was, was paid immediately by Du Bois, and that ended the whole matter.

That this did not disturb the confidence of the community in Du Bois is shown by the evidence of witnesses selected out by plaintiffs in error, no matter what their personal opinion of him may have been. In the first place, he continued afterwards for nearly two years doing a large business at the Kansas City Savings Association, and in that time drew an immense quantity of bills of exchange with bills of lading attached, which were received and handled by that bank; and the genuineness of these bills of lading were never called in question until after he had absconded, when it was discovered that he had forged some just previous to his disappearance, which he imposed on that bank through MacLellan in like manner as he had those delivered to the Bank of Kansas City.

We might remark here, that this witness, White, cuts a peculiar figure. Mr. Chick goes to him in friendship to

tell him of a rumor that he had heard which might effect his bank; White refuses to explain, but says he will subsequently, but does not. He is called as a witness in a suit against a rival institution; he is now ready to swear that in his opinion it was negligence to take from Du Bois bills of exchange with bills of lading attached without first examining whether or not the bills of lading had been signed by the proper authority. But upon cross-examination, he is compelled to admit that he did precisely what the Bank of Kansas City did, that he took from Du Bois some bills of exchange to which forged bills of lading were attached. His explanation is, that these bills of exchange and bills of lading were brought to him by MacLellan, a worthy and reliable person. This is no doubt strictly true; but at the same time we are confident that Du Bois had so reinstated himself in White's confidence, that if he had brought the bills of exchange with bills of lading attached, he would have taken them as readily from Du Bois as he would from MacLellan.

The men of this world who are wise after the fact greatly exceed in number those who were wise before.

Again, in the second place, the witnesses unanimously accord this position to Du Bois:

A. A. Whipple, cashier of the Citizens National Bank:

"Du Bois was an active man in business; did a large business in hides and wool; had made a great many drafts with bills of lading attached; was a member of our city counsel—one of its most active members; had been prominently spoken of as a candidate for mayer of the city after the Buffalo transaction, *and after that transaction a great many people believed he would make a good mayor.* He was a director in the Board of Trade, a member of its arbitration committee, a committee to whom all classes of disputes arising among members of the Board of Trade were referred; he was Captain of the Craig Rifles, a prominent

military and social organization; stood high in society and in the estimation of many people up to the time he left. On December 28th he attended my wedding reception, and made a very handsome present." (Page 87.)

J. A. Mann, of the "Journal of Commerce":

"He had a great many friends up to the time he left; he had a peculiar faculty of making friends." (Page 89.)

Albert Marty:

"Du Bois was a member of the city government, an active and influential member of the city council, very prominent in business circles; a member of the Board of Trade and of the committee of arbitration, a committee that settled all grain disputes; also, captain of a military company, which represented the best element of the young men of Kansas City—the business young men. I presume while some would say he was crooked, *others would say he was perfectly honest and straight.* If they didn't know anything about him, they would consider him as a straight man probably. I knew more than a great many others, because I was intimate with parties that he had been." (Page 92.)

George Marsh, the party who was the agent of the railroad company at the time the Buffalo transaction occurred;

"I am a member of the Board of Trade; I didn't make any charge against Du Bois as a member of the Board of Trade; I knew he was a director and an officer of the Board of Trade. I knew by hearsay that he was a very large speculator * * I knew he was captain of a company here, which was quite a society company composed of the better class of the business young men of the city; he moved in the best society; his name was in the Sunday paper very often; in his line he did a very large business. I guess he was a man who spent money freely, and calculated to make friends. I liked him up to the time the Buffalo matter came up; I wouldn't go out of my way to say anything about it, because I was not damaged; *wouldn't have said much about it on account of Du Bois moving in the place he did without I was driven to it*; I never had any talk with the officers of the Bank of Kansas City about it." (Page 94.)

William H. Winants, cashier of Armour Bros. Banking Co.:

"I was a member of the Craig Rifles, 2nd Sergeant, in 1881; Du Bois was captain up to that time; Du Bois was a prominent member of the common council of the city, and took an active part. I had the pleasure of serving with him. He was also an active member of the Board of Trade. He had many warm friends; I don't know that he had many enemies—he had some on account of family matters." (Page 86.)

Dr. Morrison Munford, manager of the "Kansas City Times":

"Du Bois was regarded as a very active business man, and was one of the most active members of our city council; he was the alderman from the ward I lived in, and lived in the same block; he and his family moved in the best society; he was a member of the Board of Trade, *and continued in his position after that Buffalo transaction, and went right along with his business as before.*" (Page 91.)

Here then, is the whole case made by the plaintiffs: It is urged that because of this Buffalo transaction, which occurred years before the bills of exchange in question were purchased by the Bank of Kansas City, it could not on account thereof become the purchaser of such bills in good faith, notwithstanding every act of the officers of the bank, and every word they testified to when called on in behalf of the plaintiffs in error tends to show that they did act in good faith, and as they supposed for the best interests of their bank at the time. Mr. Chick, its president, explicitly stated that he had no suspicion of fraud when they discounted those bills and received the accompanying bills of lading. Moreover Du Bois's foreman, who drew the bills of exchange for his principal, prepared the invoices or statements of the supposed shipments and endorsed some of the bills of lading in Du Bois's name, is clearly shown to be reliable and responsible, and was him-

self deceived at the time he delivered these documents to the bank.

It is simply a ridiculous and incredible claim to assert that a responsible and reliable banking institution, the principal bank in the South-west, headed, as is clearly shown, by prudent, careful and conservative men, would discount in bad faith before acceptance these drafts drawn on parties whose responsibility was wholly unknown to it, amounting to $10,000, for the sake of making a profit that would not exceed at most $25, and probably less than that insignificant amount.

It is perfectly clear from the testimony that Du Bois by reason of the large number of transactions previously had with the bank, in which bills of lading were invariably furnished as security for the bill of exchange drawn by him on his customers, probably amounting to hundreds of thousands of dollars, secured for himself from the bank confidence that the bills of lading furnished by him were always genuine. His foreman, MacLellan, had brought them to the bank by scores, and never in a single instance to the knowledge of its officers was there one produced that was not genuine, and such faith had they in their reliability, that they even took one or two which were forged after Du Bois's disappearance on October 28.

In view of the large number of shipments Du Bois was making, it accordingly became no difficult matter for him to include in his bills of lading representing actual shipments, some that were forged.

It appears that in the month of September previous, Du Bois sent to Hartman & Co., of St. Louis, two forged bills of lading purporting to be for wool, and that Hartman & Co. made inquiries of the railroad agents and discovered that no freight had been shipped to them. They

immediately saw Du Bois, who arranged the matter by making them genuine shipments. There is not a particle of testimony showing that these bills of lading went through the Bank of Kansas City. They may have gone through the Kansas City Savings Association, which was at that time taking his drafts with bills of lading attached Accordingly, there is not a word of evidence to connect the bank with these frauds of Du Bois. It appears that Du Bois succeeded in keeping the matter so quiet that even his own foreman didn't know of this forgery until after he had absconded.

It further appears that at or just after the time that the bills of lading in question had been sent to Goetz and Luening, Du Bois sent other forged bills to Cowan & Co., Chicago, and Cowan also learning that no shipments had been sent to him, came immediately to Kansas City, saw Du Bois and required him to make actual shipments for those that he had pretended to send.

It appears that Cowan had scarcely left Kansas City before Goetz and his attorney, Sylvester, came to inquire about their forged bills of lading.

Now, as to this Cowan matter, it does not appear what bank took the drafts, nor is it pretended that the Bank of Kansas City knew anything about the affair.

MacLellan testified that:

"When Cowan, of Chicago, was here, before he left he told you (me) everything was all right. I was very friendly with him before he left. I had no talk with the officers of the Bank about that matter; don't know that any of them knew that Cowan was here. Hartman, of St. Louis, was the other party that was here, and he went away perfectly satisfied; I don't think any of the officers of the bank saw him." (Page 99.)

In addition to this, we have the explicit denial of the president of the bank that they knew anything about this Cowan matter, and there is nothing anywhere to connect the bank with this transaction in any shape.

Bridges, the railroad agent, whose name was forged to the bills of lading first sent to Cowan, says:

"Up to the time when the Goetz and Luening matter came out, Du Bois made a great many genuine shipments; he was a large shipper. * * * In regard to the Cowan matter, Cowan came here and had an interview with me; he had those forged bills of lading, and went over also to see Du Bois; a little after that various shipments were made by Du Bois to Cowan. * * * All I know about Du Bois having settled with Cowan is, they hustled hides over there, shipped them to Cowan, Chicago, and Cowan went away apparently satisfied." (Page 81.)

The same witness testified:

"I can't tell what bank here Hartman & Co.'s bills of lading had gone through; I am under the impression he did all his business with the Bank of Kansas City; but he might have done business with every bank in town and I not have known it. My impression is formed from what I have heard since the transaction.* * * * About the Hartman & Co. difficulty, we had considerable controversy over the wires, and finally they came up to see if shipments had really been made, and we found that the bills were forged. Du Bois then made a shipment of wool to them, for which I gave a bill of lading." (Page 80.)

It is claimed that because some of Du Bois's drafts had previously gone to protest, that therefore, the Bank of Kansas City was not a purchaser in good faith of the bills of exchange drawn upon Goetz & Luening; and special stress is laid on the fact that in August, 1881, the bank cashed some bills of exchange amounting to $22,000 drawn on some Boston parties against shipments of wool, and which went to protest, and in consequence thereof the bank was dissatisfied with Du Bois. But it clearly appears

that when these bills of exchange went to protest, another house agreed to pay the drafts before the shipment of wool had reached there if the bank would hold them harmless; and such was its confidence in Du Bois, that it entered into this arrangement for his benefit, he giving at the time an indemnity obligation executed by one Ewing to pay them ten per cent of the amount of these drafts in case there should be loss on the shipment.

This is all there is to it.

Mr. Chick says:

"We relied on prompt payment. When they got to Boston, the drawees refused to pay, and rather than have the drafts go back our cashier agreed to hold another house there, to which this wool was turned over, harmless if they would pay the drafts; when they were not paid, he called on Du Bois, who brought a Mr. Ewing, and Mr. Ewing gave a guaranty for ten per cent of that amount, which was $2,700. We supposed that was ample for loss on the wool at that time. We asked for this indemnity to protect us in case there was a loss. At that time we had no knowledge that there was anything wrong about the bills of lading. We didn't get the final account of the sale of this wool from Boston until some time in November, 1881, or even later than that. It turned out, however, that there was a fall in the price of wool and there were shortages in weights, and the bank lost heavily on this transaction." (Page 77.)

Mr. Chick says it may have been also that the wool was not of the quality that the officers of the bank supposed it was. On this point Mr. Chick further says:

Q. "Do you recollect the time, a short time before these October transactions, about the month of August, 1881, when you discounted some $22,000 drafts, accompanied by shipments of wool and bills of lading, on a Boston house?"

A. "Yes, sir, there was that transaction. On that matter we lost largely. I will explain why we came to be a loser on that transaction, although we had bills of lading attached. The wool was shipped to Boston. I think we

were imposed upon as to the weights in the bills of lading; and there was also, a decline in the wool that helped to make it up. The wool did not turn out to be as much as he represented; and then there was a decline in the price of wool besides. The bills of lading were not reliable. They turned out to be short. On that single matter our bank ran behind some $8,000—33⅓ per cent on the whole amount. That was all in the month of August, 1881."

Q. "Is it not a fact that you got disgusted with Du Bois, thoroughly disgusted, as early as August, 1881?"

A. "No, sir, not exactly that way; after that shipment and the shortage, after it was ascertained there was a shortage, we were dissatisfied with his account, and expected to close it as soon as we could." (Page 72.)

It appears that the amount of these drafts on Boston was $27,000, and not $22,000.

Mr. Chick says further:

"I am certain that the Boston drafts were not charged to Du Bois's account as early as August; they may have been charged to him, and then other drafts drawn for the same amount, but I don't think that this was the case. I have only a general knowledge of that business. When those drafts came into the bank, they were credited to the account of J. N. Du Bois. When they were not paid in Boston, we gave the guaranty. They were then paid by Grey, Dewey, Gould & Co. The bank received that money, and they stood in just that way until the final wind-up, when the balance was charged to profit and loss. The $27,000 was not charged to Du Bois's account at all. When the accounts of sales were rendered, he was indebted to us over $8,000." Page 104.

Is it not preposterous to claim that a bank which would cash for this man bills of exchange to the amount of $27,000 at one time, merely getting for it the customary price of exchange between Kansas City and Boston, and then requiring simply a ten per cent guaranty to protect it against loss, which might readily occur in case of a depreciation in value of wool, and which would then again follow this transaction up by cashing in advance of accept-

ance other drafts amounting to many thousands of dollars in excess of this sum, acted in bad faith when it purchased the bills of exchange drawn on the plaintiffs in error?

The fact then remains, that the whole of the plaintiffs' case, when stripped of matters which do not pertain to it, rests on the so called Buffalo transaction and the trashy publications concerning it, and the positive denials made at the time by Du Bois of their truthfulness. All of which took place long prior to the purchase for value of the bills of exchange involved in this litigation. And against this, we have the positive testimony of the president of the bank, introduced by the plaintiffs in error themselves, that when they purchased said bills of exchange they had no suspicion that any fraud attached to them or the accompanying bills of lading. In this he is supported by every collateral circumstance which pertains to the purchase.

Shall, then, the plaintiffs in error be permitted to deny the legal effect of their own testimony?

They called out every fact, directly or indirectly, of which they now complain. Their testimony, instead of proving bad faith, proves good faith in the highest degree. And shall they be allowed to repudiate the evidence of their own witnesses?

The truth of the whole matter is, that their grievance is that they did not have an opportunity of addressing an agrarian body composed of twelve men, whose prejudices against a foreign banking institution it was anticipated would give them a verdict despite the law and the evidence.

ARGUMENT.

FIRST.

The defendant in error occupies precisely the same position it would have held if it had purchased these bills of exchange after they had been accepted by Goetz & Luening.

This familiar principle of law has received recognition from this court.

"Difficulty sometimes arises in determining whether "the plaintiff in an action on a bill of exchange is the im- "mediate promisee of the defendant, or whether he is to "be regarded as a remote party: but it is settled that the "payee, where he discounts a bill at the request of the "drawer, is regarded as a stranger to the acceptor in "respect to the consideration for the acceptance; conse- "quently, if the acceptance is absolute in its terms and "the bill is received in good faith and for value, it is no "answer at an action by him that the defendant received "no consideration for his acceptance, or that the consider- "ation therefor has failed; and it is immaterial in that "behalf whether the bill was in the hands of the drawer "and at his request, or whether it had passed into the "hands of the payee before acceptance, and was accepted "at his request."

Hoffman v. The Bank of Milwaukee, 12 Wallace, 193.
1 *Parsons on Notes and Bills*, 179.
1 *Daniels on Negotiable Instruments*, 147, 2d Ed.
Robinson v. Reynolds, 2 Q. B., 211 (42 E. C. L. R.)
Craig v. Sibbett, 15 Penn., 240.
Munroe v. Bordier, 8 C. B., 862.
Thiedemann v. Goldschmidt, 1 De Gex F. & J., 4.
Hunter v. Wilson, 19 L. J. Exch., 8.

SECOND.

When the plaintiffs in error accepted the bills of exchange, they became bound to the payee therein, although the consideration for such acceptance has failed.

In Hoffman against the Bank of Milwaukee, 12 Wallace, 193, the facts were: that the Bank of Milwaukee, Milwaukee, Wisconsin, discounted some drafts drawn by Chapin & Miles of that place on Hoffman & Co., commission merchants of Philadelphia, to which were attached bills of lading purporting to represent shipments of flour. It was subsequently discovered that the bills of lading were forgeries, and Hoffman & Co. sued the bank to recover back the money so paid out.

In that case, as in this, it was urged (*a*) that the plaintiffs resided a great distance from the place where the bills of lading were drawn, and that they had paid the bills of exchange and received the bills of lading on the faith of their approbation by the defendant; and (*b*) that had the plaintiffs known the real facts of the case, they would not have accepted and paid the drafts, and couldn't have been compelled to do so, and the loss in consequence would have fallen on the defendants, and therefore the plaintiffs paid the drafts to the defendant because they didn't know the facts—in other words, under such a mistake as entitled them to maintain their suit. But the decision of the court was against them.

The court in determining this case, says:

"Money paid under a mistake of facts, it is said, may "be recovered back as having been paid without consid- "eration, but the decisive answer to that suggestion, as "applied to the case before the court, is that money

"paid, as in this case, by the acceptor of a bill of exchange "to the payee of the same, or to a subsequent endorsee, "in discharge of his legal obligation as such, is not a "payment by mistake or without consideration, unless it "be shown that the instrument was fraudulent in its in- "ception, or that the consideration was illegal, or that "the facts and circumstances which impeach the trans- "action, as between the acceptor and the drawer, were "known to the payee or subsequent indorsee at the time "he became the holder of the instrument." * * *

"Attempt is made in argument to show that the plaintiff accepted the bills of exchange upon the faith and security of the bills of lading attached to the same at the time the bills of exchange were discounted by the defendants. Suppose it was so, which is not satisfactorily proved, still it is not perceived that the concession, if made, would benefit the plaintiffs, as the bills of exchange are in the usual form and contain no reference whatever to the bills of lading, and it is not pretended that the defendants had any knowledge or intimation that the bills of lading were not genuine. Nor is it pretended that they made any representation upon the subject to induce the plaintiffs to contract any such liability. They received the bills of exchange in the usual course of their business as a bank of discount and paid the full amount of the net proceeds of the same to the drawers, and it is not even suggested that any act of the defendant, except the indorsement of the bills of exchange, in the usual course of their business, operated to the prejudice of the plaintiffs or prevented them from making an earlier discovery of the true character of the transaction. On the contrary, it distinctly appears that the drawers of the bills of exchange were the regular correspondents of the plaintiffs, and that

they became the acceptors of the bills of exchange at the request of the drawers of the same and upon their representations that the flour mentioned in the bills of lading had been shipped to their firm for sale under the arrangement before described."

Beyond doubt the bills of lading gave some credit to the bills of exchange beyond what was created by the pecuniary standing of the parties to the same, but it is clear that they are not a part of those instruments, nor are they referred to in the body of the bills or in the acceptance, and they can not be regarded in any more favorable light for the plaintiffs than as collateral security accompanying the bills of exchange."

"Sent forward, as the bills of lading were, with the bills of exchange, it is beyond question that the property in the same passed to the acceptors when they paid the several amounts therein specified, as the lien, if any, in favor of the defendants was then displaced, and the plaintiffs became entitled to the instruments as the muniments of title to the flour shipped to them for sale and as security for the money which they had advanced under the arrangement between them and the drawers of the bills of exchange. Proof, therefore, that the bills of lading were forgeries could not operate to discharge the liability of the plaintiffs, as acceptors, to pay the amounts to the payees or their indorsers, as the payees were innocent holders, having paid value for the same in the usual course of business.

"Different rules apply between the immediate parties to a bill of exchange—as between the drawer and the acceptor, or between the payee and the drawer—as the only consideration as between those parties is that which moves from the plaintiff to the defendant; and the rule is, if that consideration fails, proof of that fact is a good defence to the action. But the rule is otherwise between the remote parties to the bill, as, for example, between the payee and the acceptor, or between the indorsee and the acceptor, as two distinct considerations come in question in every such case where the payee or indorsee became the holder of the bill before it was overdue and without

any knowledge of the facts and circumstances which impeach the title as between the immediate parties to the instrument. Those two considerations are as follows: First, that which the defendant received for his liability, and, secondly, that which the plaintiff gave for his title, and the rule is well settled that the action between the remote parties to the bill will not be defeated unless there be an absence or failure of both these considerations.

"Unless both these considerations fail in a suit by the payee against the acceptor, it is clear that the action may be maintained, and many decided cases confirm the rule, where the suit is in the name of a remote indorsee against the acceptor, that if any intermediate holder between the defendant and the plaintiff gave value for the bill, such an intervening consideration will sustain the title of the plaintiff.

"Where it was arranged between a drawer and his correspondent that the latter would accept his bills in consideration of produce to be shipped or transported to the acceptor for sale, the Supreme Court of Pennsylvania held, that the acceptor was bound to the payee by his general acceptance of a bill, although it turned out that the bill of lading forwarded at the same time with the bill of exchange was fraudulent, it not being shown that the payee of the bill was privy to the fraud. Evidence was introduced in that case showing that the payee knew what the terms of the arrangement between the drawer and the payee were, but the court held that the mere knowledge of that fact was not sufficient to constitute a defense, as the payeewas not a party to the arrangement and was not in any respect a surety for the good faith and fair dealing of the shipper.

"Failure of consideration, as between the drawer and acceptor of a bill of exchange, is no defense to an action brought by the payee against the acceptor, if the acceptance was unconditional in its terms, and it appear that the plaintiff paid value for the bill, even though the acceptor was defrauded by the drawer, unless it be shown that the payee had knowledge of the fraudulent acts of the drawer before he paid such value and became the holder of the instrument.

"Testimony to show that the payees were not bona fide holders of the bills would be admissable in a suit by them against the acceptors, and would constitute, if believed, a a good defense, but the evidence in this case does not

show that they did anything that is not entirely sanctioned by commercial usage. They discounted these bills and they had a right to present them for acceptance, and having obtained the acceptance they have an undoubted right to apply the proceeds collected from the acceptors to their own indemnity.

"Forgery of the bills of lading would be a good defense to an action on the bills if the defendants in this case had been the drawers, but they were payees and holders for value in the regular course of business, and the case last referred to, which was decided in the Exchequer Chamber, shows that such an acceptance binds the acceptor conclusively as between them and every bona fide holder for value."

In *Robinson v. Reynolds*, 2 Q. B. 196, an action of "assumpsit by indorsee of a bill of exchange against acceptors, defendants pleaded that K., the drawer, was in the habit of delivering goods to C. to be carried by him to Liverpool, consigned and deliverable there to K.'s order, and on so doing, of receiving from C. a receipt for the goods, bill of lading, or document, which, by the custom of merchants, when endorsed for value, passed the property in the goods, and entitled the indorsee to have them delivered to him. That K. used to obtain advances from plaintiff on indorsing to plaintiff such document, and drawing and delivering to him a bill of exchange on defendants (who traded at Liverpool as purchasers and commission agents of such goods as K. delivered to C.), if the goods were deliverable to defendants, or some other person to whom they were deliverable. That plaintiff used to forward the indorsed document to Liverpool, and to have it presented to defendants (or such other person), and, on the faith thereof, and at plaintiff's request, and in consideration of such security on the goods, defendants (or such other person) used to accept the bill of exchange; of all which plaintiff had notice. That K., pretending to act in pursuance of such usage, fraudulently indorsed and delivered to plaintiff a document in the usual form, to which C.'s signature was forged, pretending that it was genuine, and that the goods mentioned in it had been delivered to C., which was false; and K., at the same time, indorsed the bill of exchange to plaintiff, who advanced K. the amount on the faith of the document. That plaintiff indorsed the document, and had it presented to defendants, with the bill of exchange, and requested them to accept the bill of exchange on the faith of, and in consideration of the delivery of the docu-

ment, and delivered the document to them as a true one. That defendants, in consideration of the goods mentioned in the document, and confiding and relying on and in consideration and on the faith of the document, and in ignorance of its being forged, accepted the bill of exchange for and at the request of plaintiff. That so the consideration for the acceptance, which defendants had been induced to make under the mistake into which they had been led by the said conduct and indorsement of plaintiff, wholly failed; and that there never was any other consideration for the acceptance. The plea did not allege that plaintiff knew the document to be forged, or represented it to be genuine. *Held*, by the Court of Queen's Bench, on motion for judgment *non obstante veredicto*, to be a bad plea. Judgment of the Queen's Bench affirmed in the Exchequer Chamber. *Tindal*, C. J., in delivering the judgment of the court in the Exchequer Chamber, said: 'The sole ground on which the defendant relies is, that the acceptance was not binding on account of the total failure or insufficiency of the consideration for which it was given, the document, on the delivery of which the acceptance was given, having been forged, and there never having been any other consideration whatsoever for the acceptance of the defendants. And this would have been a good answer to the action, if the bank had been the drawers of the bill. But the bank are indorsees, and indorsees for value; and the failure or want of consideration between them and the acceptors constitutes no defense; nor would the want of consideration between the drawer and acceptors (which must be considered as included in the general averment that there was no consideration), unless they took the bill with notice of the want of consideration, which is not averred in this plea. Admitting that the bill was accepted by the drawee at the request of the bank, and on a consideration which turns out to be utterly worthless, the case is the same as if the bill had been accepted without any value at all being given by the bank to the defendants; and, on that supposition, the defendants would still be liable as acceptors to the bank, who are indorsers for value, unless not only such want of consideration existed between the drawer and acceptors, but unless the indorsees had notice or knowledge thereof. For the acceptance binds the defendants conclusively, as between them and every *bona fide* indorsee for value. And it matters not whether the bill was accepted before or after such an indorsement. Consistently with every averment in the plea, the bill may have been

accepted on the credit of the drawer, or for his accommodation; and the plaintiff would then, unquestionably, have a right to sue, having given full value for it.' The plaintiff is spoken of in this case as an indorsee. The bill was in fact drawn to the order of the drawer, and by him indorsed to the plaintiff. The plaintiff, therefore, was substantially the payee. Besides, an indorsee, who takes a bill before it is accepted, is as much an immediate party to the acceptance as the payee."

Parsons on Notes and Bills, Vol. 1, p. 180, *note*.

In *Baxter v. Chapman*, 29 Law Times, New Series 642, a bank presented a bill of exchange to the payees for their acceptance, accompanied by a ticket representing that the bank held bills of lading to cover it. The drawees thereupon executed the bill, relying on the statement that the bank held bills of lading, which both parties thought to be genuine. The bills of lading had been forged by the drawer of the bill of exchange. Held, that the drawees were not entitled to demand from the bank genuine bills of lading before paying the amount of the bill of exchange,

See also 1 Jacob's Fischer's Digest, 1170.

Again, in *Leather v. Simpson*, 11 Law Reports Equity, 398, it appears that a bill of exchange was drawn upon the plaintiff by his correspondent abroad with a bill of lading attached, and sent through bankers for presentation and collection. The bank presented the bill to the plaintiff with this memorandum: "The bank holds bills of lading and policy for 251 bales of cotton. Per William Cummings." The plaintiff accepted the bill without asking to see the bill of lading, and afterwards retired it before it was due. After having paid the money on it and receiving the bill of lading, it was discovered that the latter was a forgery. Upon a bill against the bank to

recover back the money so paid upon the bill of exchange, it was held that the memorandum did not amount to a guaranty by the bank that the so-called bill of lading was genuine, and that the plaintiff had no equity to recover back the money.

S. C. 40 Law Journal, Chancery, 177.
19 Weekly Reports, 431.

In the case of *Craig v. Sibbett*, 15 Penn. State, 238. cited with approval by this court in *Hoffman v. The Bank of Milwaukee* above, Chief Justice Gibson says:

"There is no plausible pretext for refusing to pay this bill, for it is not pretended that the plaintiffs below, who discounted it in the regular course of their business, did any acts which were not consistent with perfect good faith. They knew it was drawn against flour, supposed to have been shipped in a regular course of dealing between the drawer and the acceptors; but they had discounted other bills between the parties, which were paid at maturity; and if they had not, they would have had no reason to suspect fraud was meditated by the drawer in this particular instance.

In *First National Bank v. Burkham*, 32 Mich. 328, Justice Cooley says:

"The drawee seeks to recover from the payees the amount of the bill which they have accepted and paid, and the genuineness thereto is not disputed. The ground upon which they plant their right of recovery is, that they have paid under mistake of fact. The mistake consisted in their security, and the drawer of the bill being fictitious, when they supposed it to be genuine and reliable. It is said that the drawees relied upon this security, and would not have paid the bill but for the belief that it was valid. It is in this that the mistake consisted, on which they relied for a recovery.

"If a mistake regarding their security will authorize the drawees to recall the payment made to the payee, no reason is perceived why a mistake regarding the responsibility of the drawer, or regarding his honesty and integ-

rity, or anything else upon which they relied for protection in their dealings, should not justify the like action."

In *Young v. Lehman*, 63 Ala., 519, it was held that a letter "authorizing the person to whom it is addressed to draw on the writers for any cotton he may buy in a named city, provided the draft is accompanied by a bill of lading for the cotton, and does not in amount exceed three-fourths of the market price of the cotton, bound the writer as in favor of any person who on the faith of the letter advanced the money to buy the cotton, for a draft which conforms to the prescribed conditions, although the accompanying bill of lading is not genuine, and having paid the draft, they can not recover back the money on discovering the fraud in the bill of lading."

In an action on a bill by an indorsee against an acceptor, a plea only that the acceptance was obtained by fraud is bad.

1 *Burnham's New Cases*, 469.

1 *Scott*, 350.

United States v. Bank of Metropolis, 15th Peters 393.

If in this case the name of the drawer to the bill of exchange had been forged, and the bank had purchased it in good faith for value, the plaintiffs in error after acceptance would be bound for its payment.

The drawee of a bill of exchange is presumed to know the hand-writing of his correspondent, and if he accepts or pays a bill in the hands of a *bona fide* holder for value to which the drawee's name has been forged, he is bound by the act, and can neither repudiate the acceptance nor recover the money. A rule so well established, and so

firmly rooted and grounded in the jurisprudence of the country will not be over-ruled or disregarded.

National Park Bank v. Ninth National Bank, 46 N. Y., 77.

Goddard v. Merchants Bank, 4 Comstock, 149.

Bank of Commerce v. Union Bank, 3 Comstock, 234.

Bank of the United States v. Bank of Georgia, 10 Wheaton, 348.

Price v. Neal, 3 Burrow, 1355.

THIRD.

The plaintiffs in error can only recover on the theory, that the Bank acted in bad faith, when it discounted in advance of acceptance the bills of exchange in question.

The rule announced in *Goodman v. Simonds*, 20 Howard 343, defining the rights of the holder of negotiable paper, has become so firmly established as a part of the commercial law of this country, and is so universally followed by the courts of last resort in the several States that it seems to be almost unnecessary to more than refer to it in this case.

Accordingly we will but briefly consider the authorities on this subject.

The doctrine announced in *Goodman v. Simonds* was fully considered again in *Murray v. Lardner*, 2 Wallace 110, and is restated in the following language:

"The possession of such [negotiable] paper carries the title with it to the holder." "The possession and title are one and inseparable."

"The party who takes it before due for a valuable consideration, without knowledge of any defect of title, and in good faith, holds it by a title valid against all the world."

"Suspicion of defect of title or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker at the time of the transfer, will not defeat his title. That result can be produced only by bad faith on his part.

"*The burden of proof lies on the person who assails the right claimed by the party in possession.*

"Such is the settled law of this court, and we feel no disposition to depart from it. The rule may perhaps be said to resolve itself into a question of honesty or dishonesty, for guilty knowledge and willful ignorance alike involve the result of bad faith. They are the same in effect. Where there is no fraud there can be no question. The circumstances mentioned, and others of a kindred character, while inconclusive in themselves, are admissible in evidence, and fraud established, whether by direct or circumstantial evidence, is fatal to the title of the holder."

Hotchkiss v. National Banks, 21 Wallace 354, was an appeal from the Circuit Court of the Southern District of New York, in a suit to compel the defendants to surrender to the complainant three coupon bonds of the Milwaukee & St. Paul Railway Company, which bonds had been stolen from the complainant, and were received by the defendants as collateral security for notes discounted by them. Immediately following the acknowledgment of indebtedness by the Railway Company and promise to pay, there was a further agreement on the part of the Railway Company to make what was termed "the scrip preferred stock" attached to the bond full preferred stock at any time within ten days after any dividend should have been declared and become payable on such preferred stock, upon surrender in the City of New York of the bond and unmatured in-

terest warrants. To each of the bonds had been attached by a pin the certificate of scrip preferred stock thus referred to; but these certificates, though on the bonds when stolen, were at the time said bonds were taken by the defendants, detached therefrom. *Held*, that the absence of the certificates originally attached to the bonds, when the latter was taken by the defendants, was not of itself a circumstance sufficient to put said defendants on inquiry, as to the title of the holder; and that the title of a person who takes negotiable paper before due, for a valuable consideration, can only be defeated by showing bad faith in him, which implies guilty knowledge or wilful ignorance of the facts impairing the title of the party from whom he received it; and that the burden of proof lies on the assailant of the taker's title.

The Court, by Mr. Justice Field, in delivering judgment said: "The law is well settled that a party who "takes negotiable paper before due for a valuable consid- "eration, without knowledge of any defect of title, in "good faith, can hold it against all the world. A suspicion "that there is a defect of title in the holder, or a knowledge "of circumstances that might excite such suspicion in the "mind of a cautious person, or even gross negligence at "the time, will not defeat the title of the purchaser. That "result can be produced only by bad faith, which implies "guilty knowledge or wilful ignorance, and the burden of "proof lies on the assailant of the title."

In the case of *Collins v. Gilbert*, 94 U. S., 753, the holder had discounted an acceptance for one Barnes, a railway contractor, which acceptance had been given him as security for the execution of a contract by sub-contractors engaged in grading a railroad. The acceptor had no in-

terest in the work and merely lent his acceptance as an accommodation, and it was not contemplated that such acceptance should be negotiated. It was decided that the holder could recover. Mr. Justice Clifford, in delivering judgment said :

" It is insisted by the defendant that evidence is ad-
" missible in such a case to show that the first holder appro-
" priated the acceptance to a use other than that for which
" it was delivered to him, and that proof of such misappro-
" priation is sufficient to impeach the title of a subsequent
" holder for value, even though it came into his possession
" before maturing in the usual course of business. Where
" the supposed defect or infirmity in the title of the instru-
" ment appears on its face at the time of the transfer, the
" question whether the party who took it had notice or not,
" is in general a question of construction and must be de-
" termined by the Court as a matter of law. * * * But it
" is a very different matter when it is proposed to impeach
" the title of a holder for value by proof of any facts and
" circumstances outside of the instrument itself."

In *Shaw v. R. R. Co.*, 101 U. S., it is held :

" He (the purchaser of negotiable paper) may hold it
" though he took it negligently and when there were sus-
" picious circumstances attending the transfer. Nothing
" short of actual or constructive notice that the instrument
" is not the property of the person who offers to sell it,
" that is nothing short of *mala fides* will defeat his right."

In *Swift v. Smith*, 102 U. S., 442, the court says :

" One who purchases such [negotiable] paper from
" another, who is apparently the owner, giving a consid-
" eration for it, obtains a good title, though he may know

"facts and circumstances that cause him to suspect, or "would cause one of ordinary prudence to suspect that "the person from whom he had obtained it had no interest "in it or authority to use it for his own benefit, and "though by ordinary diligence he could have ascertained "those facts. *Goodman v. Simonds*, 20, Howard 343. He "can lose his right only by actual notice or bad faith."

The doctrine established and affirmed in the foregoing cases has been fully sustained by the New York Court of Appeals as well as by the courts of last resort in many of the other states.

In *Belmont Branch Bank v. Hoge*, 35 N. Y. 67, it was held that the title of one who for full value receives a transfer of negotiable paper before maturity, and without notice of any outstanding or antecedent, equities is not subject to be defeated by proof that he might have obtained such notice by the exercise of active vigilance. The court said: "The rights of the holder are to be determ- "ined by the simple test of honesty and good faith, and "not by mere speculation as to his probable diligence or "negligence."

In *Welch v. Page*, 49 N. Y. 143, it was held that the title of a purchaser for value of stolen negotiable paper, including bonds payable to bearer, is not impaired by negligence and that it will only be defeated by proof of fraud or bad faith, and further by notice of such facts as would put a prudent man upon his guard, will not defeat his recovery thereon. The court, by Peckham, J., says:

"The law may be regarded as settled, that a pur- "chaser, for value received, of negotiable paper, including "bonds, is not bound to exercise such care and caution as "many prudent men would exercise. 'Negligence will not

"impair his title. It is a question simply of good faith in "the purchaser. *Unless the evidence makes out a case upon "which a jury would be authorized to find fraud or bad faith "in the purchaser, it is the duty of the court to direct a verdict.*."

In *Hamilton v. Marks*, 63 Mo. 167, it is held that the rule which theretofore obtained in that state, that a purchaser of negotiable paper is not an innocent holder, if there are circumstances connected with the transfer sufficient to give an ordinarily prudent man on inquiry, is uncertain and devoid of uniformity and no longer the prevailing law. The court says: "Suspicions assert "themselves in different ways in different minds. In like "manner, what is to be deemed prudence will be found to "vary with different persons. An innocent holder may be "more or less suspicious under similar circumstances at "one time than at another. So some prudent man may "also suspect when another would not, and the standard "of the jury may be higher or lower than that of other "men equally prudent in the management of their affairs.

"In any view, therefore, both upon principal and "authority, and upon the experience of jurists and com- "mercial men, and in the interests of the affairs of busi- "iness life, it is safe to say that the liberal doctrine which "promotes the free circulation of negotiable instruments, "is the best, and the good faith of the transaction should "be the decisive part of the holder's right."

FOURTH.

It is urged that the endorsement of the banks on the bills of exchange and on some of the accompanying papers should conclude it.

There were five drafts, to each of which there was attached one bill of lading and one invoice or statement of

the pretended shipment; the indorsement of the bank whenever it appears was in these words: "Pay to L. J. Gage or order for collection, on account of the Bank of Kansas City, E. K. Thornton, Cashier." Said Gage was Cashier of the First National Bank of Chicago, to whom these bills of exchange were remitted for collection by the Bank of Kansas City.

The documents when sent forward by the Bank of Kansas City to its said Chicago correspondent had the following indorsements thereon, according to the recitations in the declaration:

First set. The draft and invoice, or statement, indorsed by the bank as aforesaid; the bill of lading indorsed J. N. DuBois, per J. MacLellan. Page 38.

Second set. Draft indorsed by the bank as the previous one; no indorsement on the invoice or statement; bill of lading indorsed, J. N. Du Bois, per J. MacLellan; also indorsed by bank in the same manner as draft.

Third set. Draft, bill of lading, and invoice or statement all indorsed by bank in the manner aforesaid; bill of lading indorsed by J. N. DuBois, per J. MacLellan.

Fourth set. Draft, bill of lading and invoice or statement indorsed by the bank; the bill of lading indorsed, J. N. DuBois, per J. MacLellan.

Fifth set. Draft indorsed by the bank; bill of lading indorsed, J. N. DuBois, per J. MacLellan.

Our answer to this is: That the endorsement by the bank is no guaranty of the genuineness of the papers. It is simply an indorsement for collection.

Sweeney v. Easter, 1 Wallace, 166.
First National Bank v. Reno Co. Bank, 1 McCrary, 490.
S. C. 3 *Fed. Rep.*, 207.

White v. National Bank, 102 U. S., 659.
See also the Sallie Magee, 3 Wallace, 451.
Conrad v. The Atlantic, 1 Peters, 886.

There is no greater liability in this case because of these indorsements than there would be if there was no indorsement.

Edwards, in his works on Bills and Promissory Notes, page 188, says:

"One who transfers a negotiable instrument by delivery or endorsement, impliedly guarantees that it is genuine, and that he is entitled to it. The rule is the same in regard to personal property; the vendor of a chattel always gives implied warranty of title."

Hannum v. Richardson, 48 Vt. 510.
15 *Johnson*, 24.
6 *Cowen*, 484.
4 *Duer*, 195.
6 *Johnson*, 5.

The indorser of a note without recourse, guarantees the genuineness of the maker's signature.

Hannum v. Richardson, 48 Vt. 510.

If there was no endorsement on the bills of lading, it would not be claimed that the bank impliedly guaranteed its genuineness.

Can it be urged then, that this qualified endorsement does amount to a guarranty?

In *Richardson v. Reynolds*, 2d Q. B., 211, S. C., 2 Adolphus, N. S., 196, a forged bill of lading attached to a bill of exchange was indorsed by the remitting bank, and notwithstanding, the acceptor was held liable.

In *Baxter v. Chapman*, 29 Law Times, N. S., 642, the bank presented a bill of exchange to the drawees for their acceptance, accompanied by a ticket representing that the bank held bills of lading to cover it. The drawees thereupon accepted the bill, relying on this statement. But this did not make the bank liable.

Again, in *Lester v. Simpson*, 11 Law Reports, Equity, 398, the bank presented a bill of exchange to the plaintiff with the memorandum that the bank held bills of lading and policy for 251 bales of cotton, per William Cunning, and it was held that this certificate did not relieve the acceptors, although it turned out that the bill of lading was a forgery.

FIFTH.

We will briefly consider the exceptions taken to the ruling upon the rejection and admission of testimony.

First. The court excluded the newspaper articles made concerning the Buffalo transaction, and it is alleged that this is an error.

The question at this issue in this case was: Did the bank in bad faith discount the five bills of exchange drawn on plaintiffs in error? To show that it did, it was proposed to introduce in evidence two or more trashy newspaper articles written concerning the drawer nearly two years previous, and which pertained to another and wholly different transaction had with and through another bank, and without any showing that the officers of the bank ever saw them.

And when it further appeared by their own testimony that the cashier of the Bank of Kansas City, E. K. Thornton, was not even a resident of Kansas City at the time of their publication, but was a resident of Kentucky, and that

he for the bank received and passed upon the bills of exchange and forged bills of lading at the time the bills of exchange were discounted.

The publications were made in August, 1879.

The testimony of plaintiff in error on this point was as follows:

"Du Bois commenced doing business at our bank in the latter part of March, 1881. Thornton came into the bank January or February, 1881. He had previously resided in Kentucky.

Q. "What officer of the bank was it, yourself or Mr. Thornton, usually passed upon these bills of lading?"

A. "Mr. Thornton, the cashier, I think passed on all the bills of lading in question in this suit." Page 77.

"I am not familiar with the signature of the railroad agent. The matter is generally referred to Mr. Thornton." Page 78.

The evidence in this case should be confined to this particular transaction. An inquiry into the good faith or bad faith of another transaction had by the drawer with another party, wherein the matter was a disputable one, and wherein its good faith wrs recognized by the acts and words of many of plaintiff's witnesses, and by the bank itself, with which he was then doing a large besiness, and continued so to do long after, we respectfully submit is too remote for the purposes of this case.

If the transfer of negotiabble paper is to rest upon clap-trap newspaper articles, written long previous, concerning a maker or drawer, then no man who has ever held official place, or has even been a candidate for official place, can, while in the flesh, give good title to his transferee.

Again, the testimony shows that these bills of exchange were not brought and delivered to the bank by Du Bois, but by a most reputable person, Du Bois's clerk, who

wrote these drafts and signed his principal's name to them; who also prepared the invoices or statements for the supposed shipments, and who further even indorsed the forged bills of lading in the name of his principal. There was nothing in his conduct to create suspicion. On the contrary, according to the testimony of C. J. White, of the Kansas City Savings Association, the fact that these documents were prepared and brought to the bank by him, would be a guarantee of their absolute reliability.

Second. It is further urged that the Court erred in excluding the testimony of Sylvester, relative to a conversation had with Chick, the president of the bank, after the transaction.

Sylvester is one of the attorneys of record for the plaintiffs in error. The ethics of our profession prohibit any attorney pretending to respectability from testifying in the cause of his client. This ought to be a positive rule of law. But whether it should, or should not be, his evidence was not competent, because it was in no sense a part of the *res gestae*.

The bills of exchange had all been discounted by the bank, and four of them had been paid. The liability of plaintiffs in error on this last acceptance had become absolute; nothing remained for the plaintiffs in error to do but to pay it.

This witness was around looking up testimony for a law suit, and afterwards in its exigency appears on the witness stand to make out a case for his clients; and he is followed by his client, who is expected to testify to precisely the same things that his attorney did.

It is true that after Du Bois had absconded the bank secured a bill of lading from MacLellan which represented

genuine shipments of hides to Milwaukee; and this they subsequently offered to the plaintiffs in error if they would pay the fifth acceptance, and they declined to do it. And this is all there is to it. On this subject Mr. Chick testified:

"After Du Bois left Kansas City, after October 31st, when Goetz and Sylvester were there, MacLellan, Du Bois's clerk, told me there was a genuine bill of lading for 450 hides that went to Milwaukee, and he said he would get it for me. I, of course, was glad to get it if I could. It went on for several days; I saw him twice about it, and finally he brought it to me about the 7th or 8th of November, and I sent it there to Mitchell's bank. Goetz & Luening had accepted a draft for $2,000 on a forged bill of lading. I sent this bill of lading to the bank with instructions to deliver to Goetz & Luening on paying the $2,000 draft they had accepted and returned protested. Neither I nor our bank ever paid anything for this bill of lading,—not a cent. Before my transaction with the Bank of Milwaukee in connection with the genuine bill of lading, the $2,000 draft and the forged bill of lading had come (gone), and had been accepted. I did not get this bill of lading from Du Bois, but got it from his clerk, the man that attended to his business about a week or ten days after he had absconded." * *

Q. "Are you ready to turn that over to us now?"
A. "If you pay the other draft we will turn it over."
Q. "Not otherwise?"
A. "I leave that to my attorney to say."

It will be remembered that the foregoing testimony was brought out by counsel for plaintiffs in error; and further, that the bank had discounted this fifth acceptance, and had received nothing on it. And this genuine bill of lading appears to have been delivered to the bank by Du Bois's chief clerk in substitution of the one that was forged, which accompanied said acceptance.

The declarations of the defendant bank's president having been made after the event, and not being shown to

be any part of *res gestae*, can in no way bind the defendant as admissions.

Bank v. Stewart, 37 Me. 519.
Luby v. R. R. Co., 17 N. Y. 131.
Clough v. Packing Co., 20 Wallace 528.
Haselden v. Union Bank Columbus, 32 Wis. 34.
Randall v. N. W. Telegraph Co., 54 Wis. 140.
McDermott v. R. R. Co., 75, Mo., 516.
Adams v. H. & St. J. R. R. Co., 74 Mo. 553.

In *Adams v. The Hannibal & St. Joseph R. R. Co.*, 74 Mo. 553, the court used the following language:

"The declarations of an agent are admissible as evidence against his principal, only when made while transacting the business of the principal and as a part of the transaction which is the subject of inquiry in the suit in which they are offered. They are then admitted as 'verbal acts' and part of the *res gestae*. What he may have said before the transaction is entered into, or after its completion, as explanatory, is no more admissible than if made by a stranger."

Ladd v. Couzins, 35 Mo. 516.

McDermott v. H. & St. Joe R. R. Co., 73 Mo. 516.

"Anything in the nature of a narrative, is to be carefully excluded."

Bacon v. Inhabitants of Charlton, 7 Cush. 586.

And in *Lund v. Inhabitants of Tynsborough*, 9 Cush. 42, the same court said: "There must be a main or principal fact, or transaction, and only such declarations are

admissible as grew out of the principal transaction, illustrate its character, are contemporary with it. and derive some degree of credit from it."

In *Luby v. Hudson R. R. R.*, 17 N. Y. 133, the Court of Appeals observed:

The declarations of an agent or servant do not, in general, bind the principal. Where his act will bind, his statements and admissions respecting the subject matter of those acts will also bind the principal, if made at the same time and so that they constituted a part of the *res gestae*. To be admissible, they must be in the nature of original, and not hearsay evidence; they must constitute the fact to be proved, and must not be the mere admission of some other fact. They must be made, not only during the continuance of the agency, but in regard to a transaction depending at the very time."

Nor was it proper evidence to present, after Mr. Chick had been called at their own request to testify in their behalf, and had denied that he had used the language ascribed to him by the attorney for plaintiffs in error.

It was incompetent evidence in the first instance; and even if the witness had been called by the defendant in error, it would have been improper testimony for the purposes of impeachment.

Proof of an admission by the secretary of an insurance company, made the morning after a loss had occurred, that the property destroyed was insured at the time of the fire, is not competent as principal evidence, being the declaration of a third person, who, though an agent of the defendant, was not then engaged in the performance of any act relating to his agency, so as to bring the case

within the rule which allows the declaration of an agent, as part of the *res gestae.*"

"Neither is such evidence competent for the purpose of disproving the agent's denial of the alleged admission; for an issue can not be raised upon an answer to a question put to affect a witness's credibility. Neither is it competent as a contradiction of the secretary's testimony in which he swore there was no insurance at the time of the fire; where it appears that the testimony attempted to be contradicted was immaterial."

Baptist Church v. Brooklyn Fire Ins. Co., 28 N. Y. 153.

Third. It is further urged that the court erred in admitting certain testimony of Mr. Chick, called out by counsel for plaintiffs in error in their examination of him. The testimony is the following:

"We never had any knowledge of a forged bill of "lading until the 31 day of October, 1881. It is not a fact "that I purposely remained ignorant of the facts and cir- "cumstances attending the protest of these drafts. I can "not state that we took any pains to enquire into the par- "ticular facts and circumstances why these several drafts "that our bank had discounted, accompanied by bills of "lading, should come back protested. I can only answer "by explaining what the usage of a bank is in such mat- "ters."

Counsel for Plaintiffs: "I beg your pardon, you are "the witness; please answer my question."

Court: "Let him state the usage as to such papers "in their bank at that time."

To which ruling Plaintiffs duly excepted.

Witness: "No, sir; I did not take any special pains, "for the reason that it is a matter of very common occur- "rence. A merchant will ship a lot of grain to New "York, the drafts come there, and for some reason a com- "mission merchant won't pay it; it may be he is not in a "position to do it; it may be he thinks they are drawn for "too much, and he refuses to pay; the drafts come back, "or are held under directions of the bank for settlement or "other arrangement. That is a very common occurrence "on shipments with bills of lading attached."

It is argued by counsel for plaintiffs in error, in various shapes and forms, that because certain drafts drawn by Du Bois and discounted by the Bank of Kansas City went to protest previous to the reception of the forged bills of lading involved in this litigation, that therefore, that this was a circumstance tending to show fraud and bad faith upon the part of the bank; and when an explanation is offered in answer to their own interrogatory, this testimony is alleged to be improper. We can not see the propriety of this position.

Fourth. It is also urged that the Court committed error in refusing to permit C. J. White, of the Kansas City Savings Association, to testify as to the occasion which led to MacLellan's employment by Du Bois.

While this is a matter wholly irrevelant to the issue of this case, nevertheless, the plaintiffs in error can not complain, for the reason that afterwards they read the deposition of MacLellan himself, who fully explained the circumstances which brought him into Du Bois's employment and made him his chief clerk.

Fifth. Several questions of this character are asked of the witnesses, and were excluded by the court, to

which the plaintiffs in error except: "Were you surprised that he skipped out?" Page 93. "Were you at all surprised when you learned that Du Bois had skipped out last fall?" Page 111. "Would you regard it prudent to deal with a man of his reputation as you would with an ordinary business man?" Page 92. "Were you surprised when you learned of these last forgeries that induced him to leave?" Page 92. "Were you surprised to learn of his departure for good?" "Would you not from your knowledge of Du Bois in this Buffalo transaction and what you had heard about these forgeries, would you not deem it prudent to look into the genuineness of the bills of lading that came from him?" "State whether or not, these forged bills of lading were any surprise to you, or were you expecting something of the kind?" "From your knowledge of the reputation of Du Bois, Mr. White, would you not consider it carelessness, gross carelessness, to deal with him as you would ordinary business men?" Page 83. "What was Du Bois's reputation during the last year he was here?" In your dealings with him, what precaution did you take?" A. "I have just explained that—by having this man MacLellan sign all the drafts." Page 83.

Does the title to commercial paper rest upon the prophetic instincts of a stranger to it?

Shall it rest upon the opinion of outside parties as to what would have been prudent for the purchasers for value in good faith to have first done before paying their money for it?

Shall the opinion of these wise men who always know how everything should have been done after it has been done, control its circulation?

Does it rest upon the opinions of a few men, picked out here and there in a community, as to what they thought was the reputation of the maker of a paper at a time the parties who purchased it and parted with their money for it? See Bailey vs Landis Lager 64 Pa St. 446 35 " " 424

But let it be conceded for the purposes of this argument that all this testimony has been improperly excluded, is it not, nevertheless, clear that had it been received, the Court should have directed the verdict to have been rendered for the defendant in error? The evidence which goes directly to the transaction itself, and the good faith of the bank is overwhelming, and can not be controlled by these outside matters, and a verdict based upon them by a jury, should be set aside as improperly rendered. Plaintiffs in error are therefore not prejudiced by these rulings.

SIXTH.

Burden of Proof.—For the purposes of this case we can readily concede that it is on us. In *Smith v. Sac County*, 11 Wall. 139, it is held that in a suit on a negotiable security, when the defendant has shown strong circumstances of fraud in the origin of the instrument, this casts upon the holder the necessity of showing that he gave value for it before maturity. Of this burden plaintiffs in error have relieved us by introducing testimony conclusively showing that the bills of exchange purchased by the bank were discounted by it for value before acceptance, in good faith, without any knowledge of any infirmity attaching to the collateral security.

SEVENTH.

The Court properly directed a verdict for the defendant in error when it manifestly appeared that plaintiff in error had made out no cause of action against it.

Oscanyun v. Ames, 103 U. S. 262.
Welch v. Sage, 47 N. Y. 147.
Belmont v. Hoge, 35 N. Y. 67.
Birdsall v. Russell, 29 id. 249.
Goodman v. Simonds, 20 How. U. S. 365.
Murray v. Lardner, 2 Wall 121.
Goodman v. Harvey, 4 Ad & E. 870.

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